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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. May 1, 2012

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on April 24, 2012

AWARDS AND PROCLAMATIONS

- Proclamations:

National Travel and Tourism Week
Motorcycle Safety Awareness Month
National Foster Care Month
- Awards:

Wichita Area Sister Cities
Key to City Presentation

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. George Theoharis – Workload of City Department Heads and delay is safety issue regarding Multi-purpose path.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 14)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Appeal to City Council of a Protest by Universal Oil of the Award of Group 1 Contract FB 130274.
(Deferred April 17, 2012)

RECOMMENDED ACTION: That the City Council makes a final determination on its prior award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

2. Amendments to Criminal Code, Chapter 5 of the Code of the City of Wichita Relating to Crime and Punishment for Criminal Offenses.
(Deferred April 17, 2012)

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

3. E-Citation Program.
(Deferred April 10, 2012)

RECOMMENDED ACTION: Approve contract negotiations with Brazos Technologies to provide e-Citation hardware and software services which will be reviewed and approved as to form by the Law Department, approve the funding sources for the project, and authorize any necessary budget adjustments.

IV. NEW COUNCIL BUSINESS

1. Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Greenway Park Apartments. (District III)

RECOMMENDED ACTION: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement, approve the issuance of a letter of intent to issue industrial revenue bonds in an amount not-to-exceed \$6,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

2. HUD Consolidated Plan/Fourth Program Year Action Plan, 2012-2013.

RECOMMENDED ACTION: Close the public hearing and authorize submission of the 2012-2013 Fourth Program Year Action Plan Community Development Block Grant, HOME Investment Partnerships, and Emergency Solutions Grant Funds to the U.S. Department of Housing and Urban Development (HUD), and authorize the release of Requests for Proposals, necessary signatures, agreements and contracts.

3. Substantial Amendment to the 2011-2012 Third Program Year Action Plan.

RECOMMENDED ACTION: Approve the substantial amendment to the 2011-2012 Third Program Year Action Plan for the Emergency Solutions Grant Program, and authorize submission to the U.S. Department of Housing and Urban Development, release of Requests for Proposals, all necessary signatures and contract documents.

4. HOME Loan Restructure; South Beech Development, LLC. (District VI)

RECOMMENDED ACTION: Approve the HOME loan restructure and authorize the necessary signatures.

5. Resolution considering an amendment to the K-96 Greenwich STAR Bond District Plan. (District II)

RECOMMENDED ACTION: Adopt the resolution which provides notice of consideration of an amendment to the K-96 Greenwich STAR bond district and sets a public hearing for June 5, 2012.

6. Emergency Response to Wichita Tornado 2012.

RECOMMENDED ACTION: Approve the project, the bonding ordinance, any necessary budget adjustments, the resolution outlining disaster cleanup procedures, and find and declare, upon request of the Mayor, that a public emergency exists, requiring final passage of the bonding ordinance on the date of its introduction.

7. Amendments to Chapter 3.94 of the City Code relating to Farmers Markets approval of changes to Wichita Farmers Market Vendors Assoc, LLC Lease Agreement.

RECOMMENDED ACTION: Place ordinance on first reading and approve the lease agreement.

8. Approval of Certificate of Convenience and Necessity for Mitchell Weber d/b/a Tornado Transit LLC, Charter Limousine Service.

RECOMMENDED ACTION: Approve a Certificate of Convenience and Necessity for Mitchell Weber to operate Tornado Transit LLC (Limousine Service) including up to one vehicle in Wichita, Kansas.

(10:00 a.m. or soon thereafter)

9. Water and Sewer Utility Revenue Bonds, Series 2012A.

RECOMMENDED ACTION: Direct the opening and reading of the bids; award the sale of the Bonds subject to approval of the final sizing terms of the Bonds by the City Manager, his designee or the Director of Finance; adopt the Bond Ordinance and Resolution and authorize the publication of the Bond Ordinance; and find and declare, upon request of the Mayor, that a public emergency exists, requiring the final passage of the Bond Ordinance on the date of introduction.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. **Approval of travel expenses for Council Member Lavonta Williams to attend the NBC-LEO Summer Conference in New Orleans, LA, July 5-9, 2012.**

(PULLED, ITEM WAS APPROVED APRIL 24, 2012)

IX. COUNCIL MEMBER APPOINTMENTS

1. **Board Appointments.**

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 14)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated April 30, 2012.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2012</u>	<u>(Consumption off Premises)</u>
Kulwinder Jaswal	Petro America #2***	2838 West Central

***Consumption/Retailer grocery stores, convenience stores etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Petitions for Street Paving in Meadowland Addition, north of Kellogg, east of 127th Street East.
(District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Statement of Costs:

- a. List of Statement of Costs. (See Attached)

RECOMMENDED ACTION: Approve and file.

6. Agreements/Contracts:

- a. Hold Harmless Agreement Easement Encroachment. (District V)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Design Services Agreement:

- a. Supplemental Design Agreements for Water Main Replacement Projects in Eastborough South and 3rd
Street North from the Central Rail Corridor to I-135. (Eastborough and District I)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Property Acquisition:

- a. Partial Acquisition of 3008 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

9. Minutes of Advisory Boards/Commissions

Wichita Employees' Retirement System, March 21, 2012
Police and Fire Retirement System, March 28, 2012

RECOMMENDED ACTION: Receive and file.

10. 2012 "Be Air Aware" Media Campaign – Kansas Department of Transportation Grant.

RECOMMENDED ACTION: Accept the grant and authorize the necessary signatures.

11. Sanitary Sewer Extension to Serve 3401 North Fairview. (District VI)

RECOMMENDED ACTION: Approve the project, adopt the resolution, authorize the necessary signatures and authorize the signing of encroachment/utility agreements as required.

12. Second Reading Ordinances: (None)

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

13. *SUB2008-00076 -- Plat of McPeak 2nd Addition located east of Tyler, south of 2nd Street. (District V)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures and adopt the Resolution.

14. *No Protest Agreement for Future Sewer Extension for Lot Split LSP2012-00007 located south of Kellogg, on the west side of 127th Street East. (District II)

RECOMMENDED ACTION: Approve the Agreement.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

None

City of Wichita
City Council Meeting
May 1, 2012

To: Mayor and City Council

Subject: Appeal to City Council of a Protest by Universal Oil of the Award of Group 1 Contract FB 130274 (All Council Districts)

Initiated By: Public Works & Utilities

Agenda: Unfinished Business

Recommendation: Determine whether to reaffirm the City Council award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

Background: On January 23, 2012, the Board of Bids recommended the award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC. The City Council awarded this bid on January 24, 2012. After this bid award by the Council, Universal Lubricants, LLC protested the bid award through testimony presented to the Board of Bids on March 12, 2012. The Board of Bids unanimously reaffirmed their original recommendation. On March 28, 2012, Universal Lubricants, LLC appealed directly to the City Council as provided for in the City's procurement policy. On April 17, 2012, the City Council heard presentations by city staff and Universal Lubricants, reviewed pertinent available file material, and deliberated in executive session. At the conclusion of that deliberation, the Council, in open session, requested the parties to prepare proposed findings of fact, and requested additional data from staff. The matter was deferred to May 1, 2012 for further action.

Analysis: Universal Lubricants, LLC has exhausted its appeal process through City staff and City Council is now considering its protest.

Universal Lubricants, LLC had the lowest unit price bid, but before Council is the determination whether Universal Lubricants, LLC presented bid documents that were non-responsive because they did not provide a required extended warranty. Universal Lubricants, LLC claims it presented a warranty, although in a different fashion and without a blanket mileage provision.

The agenda packet includes three attachments:

- Attachment 1: Provides 1) Analysis of bid pricing and actual expected quantities to be used; 2) Analysis of operational costs based on expected quantities and fluid change intervals; and 3) Comparison of waste oil and filters produced.
- Attachment 2: Staff's preliminary working notes analysis of maintaining current fluid change practices, using the Universal Lubricants products, and using the Crossfaith Ventures products. This analysis was later refined into the memo provided as Attachment 1.
- Attachment 3: Information on peer fleet experiences using the Mobil 1 product bid by Crossfaith Ventures.

Financial Consideration: As this is a unit cost bid, the total cost of product purchased by the City under the related agreement to come will be the price per unit multiplied by the quantity needed, as determined by the number of oil changes required to maintain warranty coverage. Additional life cycle costs are also affected by the number of oil changes required.

Goal Impact: This formal bid will support #3 “Ensure efficient infrastructure” by securing the desired engine protection for heavy use city passenger vehicles.

Legal Consideration: The City Law Department, through the Deputy assigned to provide services to the Purchasing division of the Finance Department, has assisted City staff in the proper handling of this bid protest. As dictated by ethical considerations, the City Attorney, who has not participated in the Board of Bids decisions being reviewed, and will be available to assist the City Council with procedural matters in the hearing of this protest.

Recommendation/Actions: It is recommended that the City Council make a final determination on its prior award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

Attachments: 1) Staff financial analysis, 2) staff preliminary working notes, and 3) report relating to peer fleet experiences.



TO: Alan King, Director of Public Works
Joseph T. Pajor, Assistant Director of Public Works

FROM: Jay Newton, Fleet & Facilities Superintendent

SUBJECT: Quantitative comparison of pricing and oil consumption on bid FB130274

DATE: April 25, 2012

The City requested bids for oils on FB130274. The bid consisted of three Groups: synthetic oils (group 1), non-synthetic oils (Group 2), and transmission oils (Group 3). Group 1 was awarded to Crossfaith Ventures, bidding the Mobil 1 product.

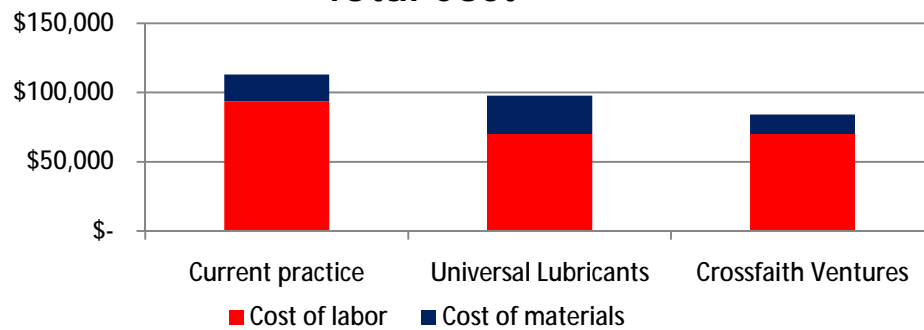
The synthetic oil bid in FB130274, Group 1, would be used to maintain the City's 175 police patrol vehicles. The manufacturer's recommended oil change interval is 5,000 miles for severe service applications.

- Current practice: Use non-synthetic oil, inspect vehicle and change oil/filter every 3,000 miles. Well within manufacturer's guidelines.
- Using Universal Lubricants' products: Inspect vehicle and change oil/filter every 4,000 miles. Within manufacturer's guidelines. Unable to extend oil change beyond manufacturer's guidelines since no additional warranty is provided.
- Using Crossfaith Ventures' products: Inspect vehicle every 4,000 miles, change oil/filter every 12,000 miles (every 3rd inspection). Outside of manufacturer's guidelines, but vendor provides warranty coverage.

FB130274 - Group 1 - Comparison of Bid Quantities to Estimated Actual Quantities					
	Universal Lubricants		Crossfaith Ventures		
	<u>Quantity</u>	<u>Cost</u>	<u>Quantity</u>	<u>Cost</u>	
Bid:	13,000	\$ 173,520	13,000	\$ 350,750	Bid: Universal is lower by \$177,230
Actual Estimated Usage:	1,641	\$ 24,872	547	\$ 12,988	Actual: Crossfaith is lower by \$11,884

The table shows that although Universal Lubricant's bid price was lower, the City would spend less money by purchasing synthetic oil from Crossfaith Ventures. This is due to using only one-third as much oil due to the warranty coverage provided by Crossfaith Ventures.

Total Cost



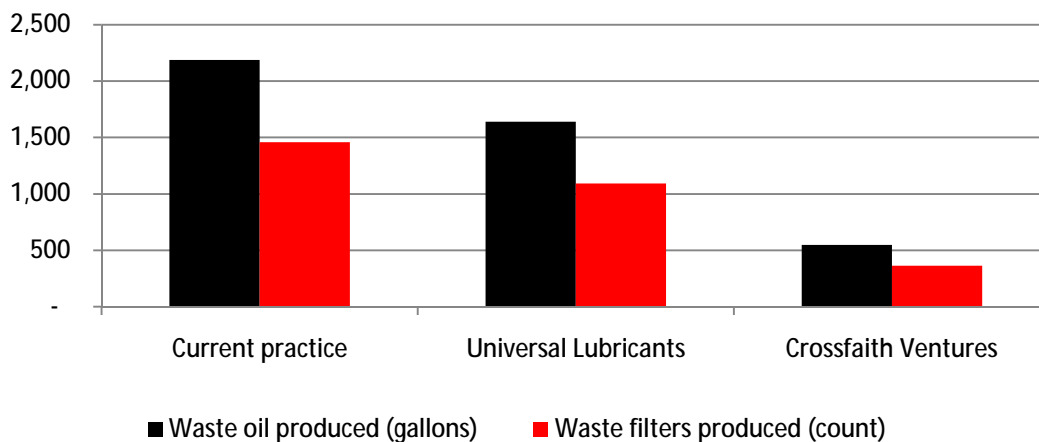
Total Cost of Service (Labor & Materials)			
	Current practice	Universal Lubricants	Crossfaith Ventures
Cost of labor*	\$ 93,515.63	\$ 70,136.72	\$ 70,136.72
Cost of materials *	\$ 19,490.63	\$ 27,693.75	\$ 13,928.91
Total cost	\$ 113,006.25	\$ 97,830.47	\$ 84,065.63

*Cost of labor includes Police Officer and Mechanic time. Extending the inspection intervals decreases labor costs when compared to current practice.

**Cost of materials includes oil and filters. Inclusion of filters is why these numbers are above the estimates in the table on the first page, which shows only oil costs.

The graph and table show the change in cost between current practice, using the Universal Lubricants products, and using the Crossfaith Ventures products. The Crossfaith Ventures products will cost \$28,941 less than the City's current practice and \$13,765 less than what would be paid if the City selects Universal Lubricants.

Waste Produced



The graph above compares the environmental impacts of current practice versus using Universal Lubricants or Crossfaith Ventures products. There will be 67% less waste oil and filters generated under the Crossfaith Ventures model compared to Universal Lubricants. Both options would have a lower environmental impact compared to the current practice.



TO: Alan King, Director of Public Works
Joseph T. Pajor, Assistant Director of Public Works

FROM: Jay Newton, Fleet & Facilities Superintendent

SUBJECT: Peer experiences with Mobil 1 lubricants

DATE: April 26, 2012

Staff conducted research on the use of Mobil 1 full synthetic oil by other fleet maintenance operations. Although many fleets use Mobil 1, most are not similar to the City in terms of their severity of service or size of the fleet.

Three fleet maintenance organizations that are similar to the City's fleet are highlighted below. All three use Mobil 1 full synthetic oil.

- State of New Hampshire Department of Safety. Fleet of 800 vehicles, including 300 State Trooper vehicles. Trooper vehicles are severe service, related to the standard responsibilities of a law enforcement agency. Change interval is 15,000 miles. Using Mobil 1 since 2010 with zero engine problems.
- Post Rock Energy Company. Based in Chanute, Kansas. Fleet of 436 vehicles. Vehicles are severe service due to nature of construction industry and since they operate in dirty, dusty conditions every day. Change interval is 12,000 miles. Using Mobil 1 since 2008 with zero engine problems.
- Lucky Cab Company of Nevada. Based in Las Vegas. Fleet of 207 vehicles. Severe service due to constant stop and go traffic and pavement temperatures exceeding 150 degrees. Change interval is 10,000 miles. Using Mobil 1 since 2004 with zero engine problems.

	Cost of oil	Cost of filters	Officer time	Mechanic time	total	cost compared to non-synthetic
Non-synthetic	\$ 15,728.13	\$ 3,762.50	\$ 51,041.67	\$ 14,583.33	\$ 85,115.63	
Dexos	\$ 24,871.88	\$ 2,821.88	\$ 38,281.25	\$ 10,937.50	\$ 76,912.50	-10%
Mobil 1	\$ 12,988.28	\$ 940.63	\$ 38,281.25	\$ 10,937.50	\$ 63,147.66	-26%

staff preliminary
working notes

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Amendments to Criminal Code, Chapter 5 of the Code of the City of Wichita
Relating to Crime and Punishment for Criminal Offenses

INITIATED BY: Wichita Police Department and Law Department

AGENDA: Unfinished Business

Recommendation: Place the ordinances on first reading.

Background: In 2009, the Kansas Criminal Code Recodification Commission released its final report regarding proposed changes to the Kansas Criminal Code. The Commission was comprised of citizens, law enforcement officers and prosecutors throughout the State of Kansas to review and make recommended changes to the Kansas Criminal Code. The Commission recommended extensive changes to the criminal code regarding renumbering and reorganization of the statutes. The Commission also recommended substantive changes to the levels of intent required for criminal offenses.

In 2010, the Kansas Legislature passed amendments to the state statutes consistent with the Commission's recommendations. The Law Department reviewed pertinent City Code provisions, Titles 1 (Code Interpretation), 4 (Intoxicating Liquor), 5 (Public Safety) and 6 (Animal Control) and prepared the necessary amendments to bring the City's ordinances into compliance with the state law provisions.

Changes were made to the City's ordinances with mandatory minimum periods of incarceration that exceeded those mandated by state statute. On April 3, 2012, the proposed amendments were considered by the City Council. Chapter 5 changes were deferred to allow Council Members time to consider the amendments regarding the domestic battery ordinance.

Staff received an analysis of the city's ordinances from the Kansas Sexual Assault Center. The analysis was reviewed and many of the proposed changes were included in the current amendments. Amendments were made to Section 5.30.020 regarding reporting of wounds. This ordinance mirrors state law provisions. No amendments are being recommended to the ordinances regarding enforcement of Protection from Abuse Orders. It is recommended that issues regarding these orders be fully reviewed at a later time. The ordinance amendments presented retain the domestic battery provisions which allow charges to be filed for battery offenses between individuals involved in dating relationships. They also retain reduction of the look back period for enhancement of domestic battery convictions for five years.

Analysis: The amendments bring the City's ordinances into compliance with the terminology used in the state criminal code. The amendments adopt the intent language utilized by the state in defining criminal offenses. The elements necessary to prove crimes under the City's ordinances will mirror the state law requirements. Further, the proposed amendments remove mandatory minimum jail sentences. The removal of the minimum sentences will reduce jail overcrowding and provide municipal court judges flexibility in sentencing repeat offenders to jail. The types of crimes for which the mandatory minimum sentences were removed are battery, prostitution and prostitution in emphasis areas.

The look-back period for determining first and second convictions for domestic violence offenses was shortened to conform to State law provisions. In determining a second or subsequent offense for sentencing purposes, State law only considered convictions within the five years preceding the date of the offense. The City's ordinances considered all earlier convictions.

House Bill 2166 amends K.S.A. 12-3007 regarding the publication requirements of City ordinances. The bill has been approved and signed by the Governor. The bill allows, in lieu of publication of the entire text of an amended ordinance, that a summary may be published. Staff is recommending delaying publication of these amendments until after July 1, 2012. Delay of the publication of the ordinance will result in a budget savings of approximately \$3,500.

Financial Considerations: Removing mandatory minimum jail sentences will decrease the length of time City defendants are held in the county jail and, thereby, decrease the amount of jail fees being paid to Sedgwick County for the incarceration of municipal court defendants.

Delaying publication of the ordinances until after July 1, 2012 will save approximately \$3,500 in publication costs.

Goal Impact: Amendments will assist in providing a Safe and Secure community.

Legal Considerations: The ordinance amendments have been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

Attachment: Ordinances

First Published in The Wichita Eagle on July 1, 2012

04/24/2012

ORDINANCE NO. 49-256

AN ORDINANCE AMENDING SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.005, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 CREATING SECTIONS 5.26.038, 5.26.039, 5.37.030, 5.42.005, 5.42.065, 5.85.010 AND 5.85.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PUBLIC SAFETY AND MORALS AND REPEALING THE ORIGINALS OF SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.01.020 of the Code of the City of Wichita, Kansas, pertaining to ethnic intimidation, is hereby amended to read as follows:

“Penalty. ~~(a)~~ Upon a conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 2. Section 5.10.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Assault deemed misdemeanor. Any person who, within the corporate limits of the city, knowingly places another person in reasonable apprehension of immediate bodily harm, is guilty of a misdemeanor. No bodily contact is necessary."

SECTION 3. Section 5.10.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Battery deemed misdemeanor. (a) Any person who, within the corporate limits of the city, (1) knowingly or recklessly causes bodily harm to another person or (2) knowingly causes physical contact with another person when done in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than one thousand dollars or one year imprisonment or both such fine and imprisonment."

SECTION 4. Section 5.10.025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Domestic battery. (a) Domestic Battery, within the corporate limits of the city, is: (1) knowingly or recklessly causing bodily harm by a family or household member to a family or household member or knowingly or recklessly causing bodily harm by an individual in a dating relationship to an individual with whom the offender is involved or has been involved to in a dating relationship or (2) knowingly causing physical contact by a family or household

member with a family or household member or knowingly causing physical contact by an individual in a dating relationship to an individual with whom the offender is involved or has been involved in a dating relationship when done in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) As used in subsection (a) of this section, "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(c) As used in subsection (a) of this section 'dating relationship' means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and the time since termination of the relationship, if applicable.

(d) Upon a first conviction, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment and fined not less than two hundred dollars, nor more than five hundred dollars. The court, in its discretion, may enter an order which requires the person to enroll in and

successfully complete a domestic violence prevention program which has been approved by the Administrative Judge of the Municipal Court.

(e) Upon a second conviction within five years immediately preceding the commission of the crime, the offender shall be sentenced to not less than ninety days nor more than one year's imprisonment and a fine of not less than five hundred dollars nor more than one thousand dollars. The court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence. The five days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention which has been approved by the Administrative Judge of the Municipal Court.

(f) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section, or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging violation of this section.

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibit or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(3) Only convictions occurring in the immediately preceding five years shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offense, whichever is applicable;

(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."

SECTION 5. Section 5.10.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Battery of a law enforcement officer. (a) Any person who, within the corporate limits of the city;

(1) knowingly or recklessly causes bodily harm or

(2) knowingly causes physical contact with a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty, in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than two thousand five hundred dollars or one year imprisonment or both such fine and imprisonment."

SECTION 6. Section 5.15.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Victim or witness intimidation. (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any criminal trial, proceeding or inquiry authorized by law; or

(2) Any witness, victim or person acting on behalf of a victim from:

a. Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, correctional officer, judicial officer or emergency communications dispatcher.

b. Causing a complaint to be sought and prosecuted, or causing a violation of probation or parole to be reported and prosecuted, and assisting in its prosecution.

c. Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) The following definitional sections shall apply to this section:

(1) "Victim" means any individual against whom any crime under the laws of this state, this municipality or any

municipality in this state, is being, has been or is attempted to be committed;

(2) "Witness" means any individual:

a. Who has knowledge of the existence or nonexistence of facts relating to any criminal trial, proceeding or inquiry authorized by law.

b. Whose declaration under oath is received or has been received as evidence for any purpose.

c. Who has reported any crime to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer, or any emergency communications dispatcher.

d. Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, or

e. Who would be believed by any reasonable person to be an individual described in this subsection.

(c) Intimidation of a victim or witness is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine or both such fine and imprisonment.”

SECTION 7. Section 5.24.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Disorderly conduct. Disorderly conduct is, one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- (c) Using fighting words or engaging in noisy conduct tending to reasonably arouse alarm, anger or resentment in others.

As used in this section, ‘fighting words’ means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of peace.

Every person convicted of violating this section shall be punished by imprisonment of a term not to exceed thirty (30) days or a fine of not more than five hundred dollars (\$500.00) or both such imprisonment and fine.”

SECTION 8. Section 5.24.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Penalty. Unless otherwise specified, violation of any of the provisions of this chapter constitutes a misdemeanor, and any violation thereof shall be punished by a fine of not more than five hundred dollars, or one year imprisonment, or by both such fine and imprisonment.”

SECTION 9. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful acts regarding depressants, stimulants or other substances.

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., no person shall possess or have under such person's control any of the following controlled substances or controlled substance analogs thereof:

- (a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- (b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;
- (c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or
- (d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto;
- (e) Any substance designated in K.S.A. 65-4113 and amendments thereto;
- (f) Any substance designated in subsection (h) of K.S.A. 65-4105 and amendments thereto.”

SECTION 10. Section 5.26.038 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Distribution of Controlled Substance. It shall be unlawful for any person to distribute or possess with the intent to distribute any controlled substance or a controlled substance analog designated in K.S.A. 65-4113 and amendments thereto to a person who is over the age of eighteen (18).”

SECTION 11. Section 5.26.039 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Unlawful Possession of a Simulated Controlled Substance. It shall be unlawful for any person to use or possess with the intent to use a simulated controlled substance.”

SECTION 12. Section 5.28.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Inhalation unlawful—Exceptions. (A) Abusing toxic vapors is possessing, buying, using, smelling or inhaling the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system, or to sell, give, or offer to sell or give to any other person any of the elements, compounds or combination of both elements and compounds as defined in subsection (D), if such person has knowledge that the product will be used in violation of this section.

(B) This subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(C) Abusing toxic vapors is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine. In addition to any sentence or fine imposed, the court shall

enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(D) For the purposes of this section, the term "toxic vapors" means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;
- (7) Freons, including freon 11 and freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

(E) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (D) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.”

SECTION 13. Section 5.30.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Report required. (a) Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report such person’s treatment of any of the following wounds, to the office of the Chief of Police of the city or the office of the Sheriff of the county in which such treatment took place:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

(b) Unlawful failure to report a wound is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and thirty (30) days imprisonment, or by both such fine and imprisonment.”

SECTION 14. Section 5.32.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“False Alarm. (a) Any person who transmits in any manner to the Fire Department of any city or county a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists,; or

(b) Any person who makes a call in any manner for emergency service assistance including police fire, medical or other emergency service, knowingly at the time of such call that there is no reasonable ground for believing such assistance is needed, is guilty of a misdemeanor.

(c) Any person convicted of giving a false alarm shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or one year imprisonment, or both such fine and imprisonment.”

SECTION 15. Section 5.36.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Permitting premises to be used for gambling.

Permitting premises to be used for gambling is knowingly:

(a) Granting the use or allowing the continued use of a place as a gambling place; or

(b) Permitting another to set up a gambling device for use in a place under the offender's control.

(c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 16. Section 5.37.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Defacement or damage of property by graffiti. Any person who writes, sprays, scratches or otherwise affixes graffiti upon any property, public or private, in which another has an interest and without the consent of such other person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. In addition to such penalty the court may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, or to pay any costs incurred by the owner or the City of Wichita related to the cleanup, repair or replacement of property damaged by that person.”

SECTION 17. Section 5.38.036 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Fraud and cheating in obtaining accommodations. (a) Any person who shall obtain food, lodging or other accommodations with a value of two hundred ~~fifty~~ dollars or less, at any inn, restaurant, hotel, boarding house, apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or

keeper thereof, and shall fail or refuse to pay therefor, shall be deemed guilty of a misdemeanor.

(b) Any person convicted of violating Section 5.38.046 shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.”

SECTION 18. Section 5.42.005 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Definitions.** As used in this chapter, the following terms shall have the following meanings:

(a) ‘Deception’ means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(b) ‘Deprive permanently’ means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(c) 'Obtain' means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(d) 'Obtains or exerts control' over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(e) 'Owner' means a person who has any interest in property;

(f) 'Property' means anything of value, tangible or intangible, real or personal;

(g) 'Services' means labor, professional services, cable television service, public or municipal utility or transportation service, telephone service, entertainment and the supplying of equipment for use.

(h) 'Stolen property' means property over which control has been obtained by theft.

(i) 'Threat' means a communicated intent to inflict physical or other harm on any person or on property."

SECTION 19. Section 5.42.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Petit theft. Petit theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property:

(a) Obtaining or exerting unauthorized control over property or services having a value of less than one thousand dollars;

(b) Obtaining by deception control over property or services having a value of less than one thousand dollars;

(c) Obtaining by threat control over property or services having a value of less than one thousand dollars;

(d) Obtaining control over property or services having a value of less than one thousand dollars knowing the property to have been stolen by another.

Any person convicted of petit theft shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In addition, whenever any person is convicted of petit theft, the court shall order such person to be fingerprinted and photographed immediately following such conviction unless such person has already been photographed and fingerprinted when charged with the specific offense which is the subject of such conviction.”

SECTION 20. Section 5.42.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Prima facie evidence of intent to permanently deprive owner or lessor of possession, use or benefit of property. (a) In any prosecution under this title, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property to return the same within ten days after the date set forth in the

lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) The failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30

days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in this chapter, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured. Tampering includes, but is not limited to:

(1) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(2) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(3) Preventing any such meters from properly measuring or registering;

(4) Knowingly taking, receiving, using or converging to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or

(5) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

(d) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property at the address as it appears in the information supplied by such person at the time of such leasing or renting, or to such person's last known address."

SECTION 21. Section 5.42.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Giving a worthless check. ~~(4)~~ (a) Giving a worthless check is the making, drawing, issuing, or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) Subsection (1) of this section shall apply if the check, draft or order is drawn for less than one thousand dollars.

(c) In any prosecution against the maker or drawer of a check, order or draft, payment of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with the drawee; (1) unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding thirty dollars for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee; or (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(d) As used in this section, the word 'notice' shall have the following meaning:

(1) 'Notice' includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States Mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order. Check is any check, order or draft on a financial institution. Financial institution means any bank, credit union, savings and loan association or depository.

(e) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated, unless such check, draft or order was presented for payment prior to the posted date; or

(2) Was given to a payee who had knowledge or had been informed when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(f) Penalty. Any person convicted of giving a worthless check is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 22. Section 5.42.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful use of a financial card. (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, or services.

(1) Using a financial card without the consent of the card holder; or

(2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) For the purposes of this section:

(1) 'Financial Card' means an identification card, plate, instrument, device, or number issued by a business organization authorizing the card holder to purchase, lease, or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

(2) 'Card holder' means the person or entity to whom or for whose benefit a financial card is issued.

(3) For the purposes of subsection (a)(2) hereof, a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

(c) Penalty. Criminal use of a financial card is a misdemeanor if the money, goods, property, or services obtained within a seven-day period are of the value of less than one thousand dollars. Any person convicted of criminal use of a financial card shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment."

SECTION 23. Section 5.42.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Theft of lost or mislaid property. Any person who fails to take reasonable measures to restore lost, mislaid or property delivered to them by a mistake, to the owner, when the person has obtained control of such property,

who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of such property, shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 24. Section 5.42.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Receiving stolen property. (a) A person commits the crime of receiving stolen property, with a value of less than one thousand dollars, if for the purposes of depriving the owner of a lawful interest therein, he or she receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

(b) Evidence of the following is admissible in any criminal prosecution pursuant to this section to prove the requisite knowledge or belief of the alleged receiver:

(1) That he or she was found in possession or control of other property stolen on separate occasions from two or more persons;

(2) That he or she received other stolen property in another transaction within the year preceding the transaction charged;

(3) That he or she acquired the stolen property for a consideration which he or she knew was far below its reasonable value;

(4) That he or she obtained control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce a person to believe the property was stolen.”

SECTION 25. Section 5.44 040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Illegal dumping. (a) It is unlawful to dump or cause to be dumped any wasted matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for the purpose by the governing body having charge of that property.

(b) Any person violating this section is guilty of a misdemeanor. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(c) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by the health department.

(d) Whenever waste dumped in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings which display the name of a person thereon,

addressed to such person or in any other manner indicating that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter. Presumptions in this section may be overcome by proof that the person identified from the letter of other item caused the waste to be collected and transported for disposal at an approved site by a person licensed by the city to collect and dispose of solid waste.

(e) Any person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a first conviction, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction by a mandatory fine of not less than one thousand dollars nor more than two thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon the trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other conditions of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than twelve hours.

(h) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in bulk quantities, tires, furniture, or appliances shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction shall be punished by a fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(i) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that the court may order that the

defendant perform community service specified by the court in lieu of the mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed."

SECTION 26. Section 5.66.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Criminal damage to property. (a) Criminal damage to property is by means other than by fire or explosive:

(1) Knowingly damaging, mutilating, defacing, destroying, or substantially impairing the use of any property, in which another has an interest without the consent of such other person; or

(2) Damaging, mutilating, defacing, destroying or substantially impairing the use of any property, with intent to injure or defraud an insurer or lienholder.

(b) Criminal damage to property is a misdemeanor if the property damaged is of a value of less than one thousand dollars, or is of the value of one thousand dollars or more and is damaged to the extent of less than one thousand dollars.

(c) Penalty. Any person who is convicted of criminal damage to property shall be deemed guilty of a misdemeanor and shall be punished by a fine

not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 27. Section 5.66.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Criminal trespass.** Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person who knows he/she is not authorized or privileged to do so, and:

(a) Such person enters or remains therein in defiance of an order not to enter or to leave such premises on property personally communicated to such person by the owner thereof or other authorized person; or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entries; or

(c) Such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, and any amendments to said statutory sections, and the restraining order has been personally served upon the person so restrained.

(d) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner.

(1) As used in this section:

(A) 'Health care facility'" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(B) 'Health care provider' means any person: (1) Licensed to practice a branch of the healing arts; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) licensed to practice dentistry; (5) licensed to practice optometry; (6) licensed to practice pharmacy; (7) registered to practice podiatry; (8) licensed as a social worker; or (9) registered to practice physical therapy.

(e) Any person who commits a criminal trespass with the corporate limits of the city of Wichita shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment which shall not exceed six months, or by both such fine and imprisonment.

(f) Upon conviction of subsection (c) of this section, a person shall be sentenced to not less than forty-eight consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation, suspension or reduction of sentence. Such imprisonment may be served in work release or house arrest."

SECTION 28. Section 5.66.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with the conduct of a lawful business. (a) Interference with the conduct of a lawful business is:

(1) Conduct at or in any building owned, operated or controlled by a private individual or corporation that knowingly causes an obstruction to or interference with the free and uninterrupted use of such property as a lawful business by any employee, patron, patient or other invitee on such premises, or which prevents the free and uninterrupted ingress, egress or regress therein, thereon or thereto;

(2) Knowingly refusing or failing to leave any such building owned, operated or controlled by a private individual or corporation upon being requested to do so by the owner thereof, any law enforcement officer or other authorized individual.

(b) Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, not more than two thousand five hundred dollars:

(2) Upon a second conviction, not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth conviction, not less than seven hundred fifty dollars nor more than two thousand five hundred dollars;

(5) Upon a fifth conviction, not less than one thousand dollars; nor more than two thousand five hundred dollars;

(6) Upon a sixth conviction, not less than one thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(7) Upon a seventh conviction, not less than one thousand five hundred dollars nor more than two thousand five hundred dollars;

(8) Upon a eighth conviction, not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred dollars;

(9) Upon a ninth conviction, not less than two thousand dollars nor more than two thousand five hundred dollars;

(10) Upon a tenth conviction, not less than two thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(11) And upon an eleventh or subsequent conviction, not less than two thousand five hundred dollars.

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six months, or by both such fines and imprisonment.

(c) The imposition of the fines established in subparagraphs (b)(2) through (11) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court

but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

(d) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section, conviction includes being convicted of a violation of this section, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 29. Section 5.68.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Patronizing a prostitute. Any person who patronizes a prostitute is guilty of a misdemeanor. For purposes of this chapter, "patronizing a prostitute" shall mean:

(a) Knowingly entering or remaining in a house of prostitution with the intent to engage in sexual intercourse or any unlawful sexual acts with a prostitute; or

(b) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act;

(c) Every person convicted under this section (5.68.020), shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment.”

SECTION 30. Section 5.68.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting prostitution. (a) Any persons who knowingly commits any of the following acts when the prostitute is sixteen or more years of age, shall be deemed guilty of a misdemeanor.

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) Procuring a prostitute for a house of prostitution;

(4) Inducing another to become a prostitute;

(5) Soliciting a patron for a prostitute or for a house of prostitution;

(6) Procuring a prostitute for a patron;

(7) Procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of assisting or promoting that person's engaging in prostitution; or

(8) Being employed to perform any act which is prohibited by this section.

(b) Every person convicted under this section (5.68.030) shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment ”

SECTION 31. Section 5.68.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Soliciting for immoral purposes. ~~(1)~~ (a) It is unlawful to solicit any person upon the streets or in public places within the corporate limits of the city, to engage in an act of prostitution, sodomy or sodomy for hire.

(b) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

(1) "Public place" is any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and all public grounds, areas and parks.

(2) "Prostitution" is sexual intercourse for hire.

(3) "Sodomy" is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal.

(4) "Sodomy for hire" is an act of oral or anal copulation for hire.

(c) Any person violating the provisions of this section (5.68.110) shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months imprisonment or by both such fine and imprisonment.”

SECTION 32. Section 5.68.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Adultery. Adultery is sexual intercourse or sodomy by a person with another who is not his spouse if (a) such person is married; or (b) such person is not married and knows that the other involved in such intercourse is married; any person who shall be deemed guilty of adultery shall be guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed five hundred dollars and/or imprisonment of thirty days or both such fine and/or imprisonment.”

SECTION 33. Section 5.68.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Lewd and lascivious behavior. Lewd and lascivious behavior is:

(a) Publicly engaging in otherwise lawful sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others who are sixteen or more years of age; or

(b) Publicly exposing a sex organ or exposing a sex organ in the presence of a person who is sixteen or more years of age, is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

Any person committing lewd and lascivious behavior shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a

fine of not more than five hundred dollars or six months; imprisonment, or both such fine and imprisonment.”

SECTION 34. Section 5.68.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting obscenity unlawful—Definitions—Evidence—Defense to prosecution—Exceptions—Penalty.

(a) It is declared to be unlawful to promote obscenity or to promote obscenity to minors. Promoting obscenity is recklessly:

(1) Manufacturing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

(2) Possessing any obscene material or obscene device with intent to ~~issue~~, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or obscene device; or

(3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

(4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Evidence that materials or devices were promoted to emphasize their prurient appeal or sexual provocative aspect shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal; or

(2) The person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(c) (1) Any material or performance is "obscene" if:

a. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

b. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

c. Taken as a whole, a reasonable person would find that the material, or performance, lacks serious literary, educational, artistic, political or scientific value.

(2) 'Material' means any tangible thing which is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(3) 'Obscene device' means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

(4) 'Performance' means any play, motion picture, dance or other exhibition performed before an audience.

(5) 'Sexual intercourse' and 'sodomy' have the meanings provided by K.S.A. 21-5501 and amendments thereto.

(6) 'Wholesaler' means a person who sells, distributes or offers for sale or distribution obscene materials only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(d) It is a defense to a prosecution for obscenity that:

(1) The persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such

library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

(e) The provisions of this section which prescribe a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

(f) Promoting obscenity is declared to be a misdemeanor punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

(g) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter

into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, he shall forfeit the recognizance.”

SECTION 35. Section 5.68.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting obscenity to minors—Defined—Defense to prosecution—

Penalty. (a) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material, device, or a member of the audience of an obscene performance is a child under the age of eighteen years. Any material, device or performance is ‘obscene’ if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material, device or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, and that the material, device or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

(b) Notwithstanding the provisions of K.S.A. 21-5204, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other

official or apparently official document purporting to establish that such minor was eighteen years old or more; or

(2) An exhibition in a state of nudity is for a bona fide scientific or medical purpose or for an educational or cultural purpose for a bona fide school, museum or library.

(c) Promoting obscenity to minors is a misdemeanor, punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

(d) Upon any conviction for promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, he shall forfeit the recognizance.”

SECTION 36. Section 5.68.156 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Displaying material harmful to minors. (a) Definitions.

(1) ‘Blinder Rack’ means a device in which material is displayed in a manner that the lower two-thirds (2/3) of the material is not exposed to view;

(2) 'Harmful to minors' means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or with respect to a prosecution for an act described by subsection (2)(a) of this section, that portion of the material that was actually exposed to the view of minors, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material, device or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

b. The average adult person applying contemporary community standards would find that the material, device or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(c) A reasonable person would find that the material, device or performance lacks serious literary, scientific, educational, artistic or political value for minors.

(3) 'Material' means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, or recording tape, video tape.

(4) 'Minor' means any unmarried person under the age of eighteen years.

(5) 'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement;

(6) 'Performance' means any motion picture, film, video tape, played record, phonograph, or tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(7) 'Person' means any individual, partnership, association, corporation, or other legal entity of any kind.

(8) A 'reasonable bona fide attempt' means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

(9) 'Sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) 'Sexual conduct' means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, a female's, breast.

(11) 'Sexual excitement' means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(b) Offenses. No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device; provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds of the material is not exposed to view;

(2) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material or device which is harmful to minors; or

(3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(c) Defenses. It shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased,

distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

(3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(4) With respect to a prosecution for an act described by subsection (b)(1) of this section, the allegedly harmful material was kept behind blinder racks.

(5) With respect to a prosecution for an act described by subsection (b)(1) or (b)(2) of this section, the defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more.

(6) With respect to a prosecution for an act described by subsection (b)(3) of this section, the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) The provisions of Section 5.68.156 shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

(e) If any provision or clause of this Section 5.68.156 or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(f) Penalties. Any person who shall be convicted of violating any provision of this section is guilty of a misdemeanor and shall be fined a sum not exceeding one thousand dollars and may be confined in jail for a definite term which shall be fixed by the court and shall not exceed ~~one~~ six months. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act, thing or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material shall constitute a single offense.”

SECTION 37. Section 5.68.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Sodomy for hire. (a) Any person who commits sodomy for hire is guilty of a misdemeanor.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.170), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment.”

SECTION 38. Section 5.68.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Patronizing a person offering sodomy for hire. (a) Any person who patronizes a person offering sodomy for hire, as defined in Section 5.68.170, is guilty of a misdemeanor.

(b) For purposes of this section, "patronizing a person offering sodomy for hire" means knowingly hiring a person to engage in oral copulation or anal copulation.

(c) Every person convicted under this section (5.68.180), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment.”

SECTION 39. Section 5.68.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting sodomy for hire. (a) Any person committing any of the following acts shall be deemed guilty of a misdemeanor:

(1) Establishing, owning, maintaining or managing a place where sodomy for hire is committed or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a place where sodomy for hire is committed;

(3) Procuring or inducing another to engage in sodomy for hire;

(4) Soliciting a patron for a person offering sodomy for hire;

(5) Procuring transportation for, paying for the transportation of or transporting a person within the city with the intention of assisting or promoting that person's engaging in sodomy for hire;

(6) Being employed to perform any act which is prohibited by this section.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform, an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.190), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment."

SECTION 40. Section 5.68.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Sodomy. (a) Any person who commits sodomy (1) with another person who is sixteen or more years of age and members of the same sex, or (2) with an animal, is guilty of a misdemeanor.

(b) Every person convicted under this section shall be punished by a fine of not more than five hundred dollars, or by confinement for a period of six months, or by both such fine and imprisonment."

SECTION 41. Section 5.68.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Sexual battery. (a) Sexual battery is the touching of a victim who is sixteen or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars or twelve months imprisonment or by both such fine and imprisonment."

SECTION 42. Section 5.68.215 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Anti-prostitution emphasis area—Enhanced penalties.

(a) The following described area of the city is designated to be an anti-prostitution emphasis area:

(1) An area bounded to the north at Twenty-First Street, on the east by Washington, on the south by Second Street, and on the west by Main Street, which becomes Park Place, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(2) An area bounded to the north at Waterman, on the east by Washington, on the south by Forty-Seventh Street South, and to the west by Wichita, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(3) An area bounded to the north by Thirteenth Street, on the east by Hillside, on the south by Second Street, and on the west by Cleveland, which encompasses all areas within those parameters, and including the property on both sides of each of the boundary streets.

(b) Any person who commits an unlawful act of prostitution, or a prostitution-related act within the area set forth in subsection (a) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars or one year's imprisonment, or by both such

fine and imprisonment. Upon a conviction of a violation of this section, the court shall impose a fine of not more than one thousand dollars, one year imprisonment or both such fine and/or imprisonment.

(c) For the purposes of this section, an unlawful act of prostitution or a prostitution-related act shall include the following sections of this code, and any amendments thereto: 5.68.010 (prostitution), 5.68.020 (patronizing a prostitute), 5.68.030 (promoting prostitution), 5.68.110 (soliciting for immoral purposes), 5.68.170 (sodomy for hire), 5.68.180 (patronizing a person offering sodomy for hire), 5.68.190 (promoting sodomy for hire), 5.68.200 (sodomy), or 5.68.210 (loitering for the purpose of solicitation).

(d) If any subsection, clause or provision of this section is for any reason held illegal, invalid or unconstitutional, such action shall not affect the remaining provisions of this section which shall remain valid to the extent possible.”

SECTION 43. Section 5.72.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

“ **Interference with Law Enforcement.** (a) Interference with law enforcement is falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency acts in reliance or upon such information; or

(b) Knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(c) Violation—Penalty. Any person violating any provision of this section of the code is guilty of a misdemeanor and shall be punished by a fine of not more than two thousand five hundred dollars and/or an imprisonment of not more than one year and/or both such fine and imprisonment."

SECTION 44. Section 5.73.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Rioting. (a) Riot is:

(1) five or more persons acting together without lawful authority engaging in any use of force or violence which produces a breach of the public peace, or

(2) any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution.

(b) Any person who violates the provisions of this section within the corporate limits of the city is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 45. Section 5.75.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with conduct of public business—Defined. Interference with the conduct of public business in public buildings is:

(a) Conduct at or in any public building owned, operated or controlled by the city or any of its political subdivisions so as to knowingly deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building; or

(b) Knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof; or

(c) Knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building; or

(d) Knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting

or session, or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session; or

(e) Knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.”

SECTION 46. Section 5.75.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with conduct of public business—Misdemeanor.

Interference with the conduct of public business in public buildings is a misdemeanor.

Upon conviction such person shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or one year imprisonment or both such fine and imprisonment.”

SECTION 47. Section 5.82.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Telephone service—Interfering with. (a) It is unlawful for any person to use any telephone instrument, telephone equipment, telephone facilities or telefacsimile communication device for any of the following purposes:

(1) Knowingly make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

(3) Making or causing the telephone of another repeatedly to ring or repeatedly transmit a telefacsimile communication with intent to harass any person at the called number; or

(4) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or

(5) Knowingly permit any telephone or telefacsimile communication under one's control to be used in violation of this section.

(b) As used in this section 'telefacsimile communication' means the use of electronic equipment to send or transmit a copy of a document via telephone line.

(c) Any person who shall commit an act prohibited by this section shall be punished by a fine of not more than two thousand five hundred dollars or by one year imprisonment, or by both such fine and imprisonment."

SECTION 48. Section 5.85.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Unlawful Interference with a Firefighter. Unlawful Interference with a firefighter is knowingly:

(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties;

(b) Obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency; or

(c) Unlawful interference with a firefighter is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 49. Section 5.85.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Interference with Emergency Medical Services Personnel.

(a) Unlawful interference with an emergency medical services attendant is knowingly:

(1) Interfering with any attendant while engaged in the performance of such attendant's duties; or

(2) Obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) Unlawful interference with an emergency medical services attendant is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 50. Section 5.88.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful discharge of a firearm, air rifles, pellet guns and BB guns.

(a) It is unlawful for any person to discharge or fire any gun, pistol, air rifle, pellet gun, BB gun or any other firearm within the corporate limits of the city except at any properly licensed shooting gallery or upon a pistol range or at a gun club, either of which shall be approved by the chief of police.

(b) This section shall not apply to law enforcement officers while actually engaged in the performance of such officer's duty.

(c) This section shall not apply to health officers while actually engaged in the performance of such officer's duty.

(d) This section shall not apply to historical re-enactors and actors when engaged in performances and demonstrations when the powder charge does not exceed thirty grains for pistols, sixty-five grains for long guns and one-quarter pound for cannon, and the gun contains no projectile other than the minimum amount of wadding necessary to hold the powder charge in place. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or the city managers designee.

(e) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(f) In addition to the penalty for the violation of this section, it shall be the duty of the municipal court judge to order any weapon seized in connection with such violation to be forfeited to the city and the same shall be disposed of by the chief of police pursuant to Section 5.88.010(11).”

SECTION 51. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Air rifles, pellet guns and BB guns—Carrying within the city.

(a) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(4) In addition to the penalty for the violation of this section, the municipal court judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010(11).”

SECTION 52. The originals of Sections 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 and 5.88.030 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 53. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once of a summary of the ordinance, in the official city paper. Publication shall occur after July 1, 2012 and comply with the provisions of House Bill 2166 (2012).

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of May, 2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

DELINEATED

04/24/2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.005, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 CREATING SECTIONS 5.26.038, 5.26.039, 5.37.030, 5.42.005, 5.42.065, 5.85.010 AND 5.85.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PUBLIC SAFETY AND MORALS AND REPEALING THE ORIGINALS OF SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.01.020 of the Code of the City of Wichita, Kansas, pertaining to ethnic intimidation, is hereby amended to read as follows:

“Penalty. ~~(a)~~ Upon a ~~first~~ conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(b) On a second or subsequent conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be sentenced to~~

~~imprisonment of not less than five days nor more than one year and a fine of not less than five hundred dollars nor more than two thousand five hundred dollars.”~~

SECTION 2. Section 5.10.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Assault deemed misdemeanor. Any person who, within the corporate limits of the city, ~~intentionally~~ knowingly places another person in reasonable apprehension of immediate bodily harm, is guilty of a misdemeanor. No bodily contact is necessary.”

SECTION 3. Section 5.10.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Battery deemed misdemeanor. (a) Any person who, within the corporate limits of the city, (1) ~~intentionally~~ knowingly or recklessly causes bodily harm to another person or (2) ~~intentionally~~ knowingly causes physical contact with another person when done in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than one thousand dollars or one year imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

(c) ~~For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

(1) ~~‘Conviction’ includes being convicted of a violation of this section or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.~~

(2) ~~‘Conviction’ includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance.~~

(3) ~~Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

(4) ~~It is irrelevant whether an offense occurred before or after conviction for a previous offense.”~~

SECTION 4. Section 5.10.025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Domestic battery. Domestic Battery, within the corporate limits of the city, is: (a) ~~Any person who, within the corporate limits of the city, (1)~~ intentionally knowingly or recklessly causes causing bodily harm by a family or household member to a family or household member or a domestic partner or knowingly or recklessly causing bodily harm by an individual in a dating relationship to an individual with whom the offender is involved or has been involved to in a dating relationship or (2) ~~intentionally knowingly causes causing~~

physical contact by a family or household member with a family or household member or ~~a domestic partner~~ knowingly ~~causes~~ causing physical contact by an individual in a dating relationship to an individual with whom the offender is involved or has been involved in a dating relationship when done in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) As used in subsection (a) of this section, "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(c) As used in subsection (a) of this section ~~"domestic partner"~~ 'dating relationship' means a ~~person who is, or who has in the past, been involved in an ongoing intimate relationship with the individual~~ social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and the time since termination of the relationship, if applicable.

(d) Upon a first conviction, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment and fined

not less than two hundred dollars, nor more than five hundred dollars. ~~In lieu of the mandatory sentence, t~~The court, in its discretion, may enter an order which requires the person to enroll in and successfully complete a ~~court-approved~~ domestic violence prevention program which has been approved by the Administrative Judge of the Municipal Court.

(e) Upon a second conviction within five years immediately preceding the commission of the crime, ~~a person~~ the offender shall be sentenced to not less than ninety days nor more than one year's imprisonment and a fine of not less than five hundred dollars nor more than one thousand dollars. ~~Upon a second conviction, t~~The court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence. The five days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a ~~court-approved~~ treatment program for domestic violence prevention which has been approved by the Administrative Judge of the Municipal Court.

(f) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section, ~~or Section 5.10.020~~ or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging violation of this section ~~or Section 5.10.020~~.

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section ~~or Section 5.10.020~~ prohibit or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(3) Only convictions occurring in the immediately preceding five years shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offense, whichever is applicable;

~~(3)~~ (4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 5. Section 5.10.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Battery of a law enforcement officer. (a) Any person who, within the corporate limits of the city;

(1) ~~intentionally~~ knowingly or recklessly causes bodily harm or

(2) knowingly causes physical contact with a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty, in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than two thousand five hundred dollars or one year imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(c) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) 'Conviction' includes being convicted of a violation of this section or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.~~

~~(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance.~~

~~(3) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into~~

~~account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.”~~

SECTION 6. Section 5.15.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Victim or witness intimidation. (a) Intimidation of a witness or victim is ~~knowingly and maliciously~~ preventing or dissuading, or attempting to prevent or dissuade with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any criminal trial, proceeding or inquiry authorized by law; or

(2) Any witness, victim or person acting on behalf of a victim from:

~~(A)~~ a. Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, correctional officer, judicial officer or emergency communications dispatcher.

~~(B)~~ b. Causing a complaint to be sought and prosecuted, or causing a violation of probation or parole to be reported and prosecuted, and assisting in its prosecution.

~~(C)~~ c. Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) The following definitional sections shall apply to this section:

~~(1)~~ ~~"Malice" means an intent to vex, annoy, harm or injure in any way another person or intent to thwart or interfere in any manner with the orderly administration of justice;~~

~~(2)~~ (1) "Victim" means any individual against whom any crime under the laws of this state, this municipality or any municipality in this state, is being, has been or is attempted to be committed;

~~(3)~~ (2) "Witness" means any individual:

~~(A)~~ a. Who has knowledge of the existence or nonexistence of facts relating to any criminal trial, proceeding or inquiry authorized by law.

~~(B)~~ b. Whose declaration under oath is received or has been received as evidence for any purpose.

~~(C)~~ c. Who has reported any crime to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer, or any emergency communications dispatcher.

~~(D)~~ d. Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, or

~~(E)~~ e. Who would be believed by any reasonable person to be an individual described in this subsections ~~(3)(A), (B), (C) or (D) of this section.~~

(c) Intimidation of a victim or witness is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine or both such fine and imprisonment.”

SECTION 7. Section 5.24.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Disorderly conduct.** Disorderly conduct is, ~~with knowledge or probable cause to believe that such acts~~ one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- (c) Using ~~offensive, obscene, or abusive language~~ fighting words or engaging in noisy conduct tending to reasonably arouse alarm, anger or resentment in others.

As used in this section, ‘fighting words’ means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of peace.

Every person convicted of violating this section shall be punished by imprisonment of a term not to exceed thirty (30) days or a fine of not more than five hundred dollars (\$500.00) or both such imprisonment and fine.”

SECTION 8. Section 5.24.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same—Penalty. Unless otherwise specified, ~~✓~~violation of any of the provisions of this chapter constitutes a misdemeanor, and any violation thereof shall be punished by a fine of not more than five hundred dollars, or one year imprisonment, or by both such fine and imprisonment.”

SECTION 9. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful acts regarding depressants, stimulants or other substances.

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., no person shall possess or have under such person's control any of the following controlled substances or controlled substance analogs thereof:

(a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto;

(e) Any substance designated in K.S.A. 65-4113 and amendments thereto;

(f) Any substance designated in subsection (h) of K.S.A. 65-4105 and amendments thereto.”

SECTION 10. Section 5.26.038 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Distribution of Controlled Substance. It shall be unlawful for any person to distribute or possess with the intent to distribute any controlled substance or a controlled substance analog designated in K.S.A. 65-4113 and amendments thereto to a person who is over the age of eighteen (18).”

SECTION 11. Section 5.26.039 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Unlawful Possession of a Simulated Controlled Substance. It shall be unlawful for any person to use or possess with the intent to use a simulated controlled substance.”

SECTION 12. Section 5.28.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Inhalation unlawful—Exceptions. (A) Abusing toxic vapors is ~~knowingly~~ possessing, buying, using, smelling or inhaling the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system, or to sell, give, or offer to sell or give to any other person any of the elements, compounds or combination of both elements and compounds as defined in subsection (D), if such person has knowledge that the product will be used in violation of this section.

(B) This subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(C) Abusing toxic vapors is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine. In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(D) For the purposes of this section, the term "toxic vapors" means the following substances or products containing such substances:

(1) Alcohols, including methyl, isopropyl, propyl or butyl;

(2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;

(3) Acetone;

(4) Benzene;

(5) Carbon tetrachloride;

(6) Cyclohexane;

(7) Freons, including freon 11 and freon 12;

(8) Hexane;

(9) Methyl ethyl ketone;

(10) Methyl isobutyl ketone;

(11) Naphtha;

(12) Perchlorethylene;

(13) Toluene;

(14) Trichloroethane; or

(15) Xylene.

(E) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (D) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.”

SECTION 13. Section 5.30.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Report required.” ~~information to be shown.~~ (a) ~~Every physician who answers a call on an emergency case or who attends or administers to any patient~~

~~that falls within the term of an emergency case as defined in the preceding section, and every hospital, hospital attendant or persons in charge thereof, who shall receive in their care, any patient in any emergency case shall immediately notify the police department of such case, giving the name and location of the patient and the nature of the injury.~~ Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report such person's treatment of any of the following wounds, to the office of the Chief of Police of the city or the office of the Sheriff of the county in which such treatment took place:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

(b) ~~If an examination, as provided for in K.S.A. 65-448(a) and amendments thereto, has taken place solely upon request of the victim, the medical care facility shall not notify the Wichita Police Department without the written consent of the victim, unless otherwise required by law.~~ Unlawful failure to report a wound is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and thirty (30) days imprisonment, or by both such fine and imprisonment.

(c) ~~There shall be no criminal liability for failing to comply with the provisions of subsection (b)."~~

SECTION 14. Section 5.32.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

~~“False calls for police assistance; false reports~~ Alarm. (a) Any person who ~~gives or causes to be given~~ transmits in any manner to the Fire Department of any city or county a false call or alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists.;
or

(b) Any person who makes a call in any manner for emergency service assistance including for police assistance, fire, medical or other emergency service, or who sends or causes to be sent to any police station or member of the police department any false call for assistance or whoever knowingly makes or causes to be made a false report of the commission of any crime to a member of the police department at the time of such call that there is no reasonable ground for believing such assistance is needed, is guilty of a misdemeanor.

(c) Any person convicted of giving a false alarm and any violation thereof shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or one year imprisonment, or both such fine and imprisonment.”

SECTION 15. Section 5.36.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Permitting premises to be used for gambling.

Permitting premises to be used for gambling is ~~intentionally~~ knowingly:

(a) Granting the use or allowing the continued use of a place as a gambling place; or

(b) Permitting another to set up a gambling device for use in a place under the offender's control.

(c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 16. Section 5.37.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Defacement or damage of property by graffiti. Any person who writes, sprays, scratches or otherwise affixes graffiti upon any property, public or private, in which another has an interest and without the consent of such other person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. In addition to such penalty the court may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, or to pay any costs incurred by the owner or the City of Wichita related to the cleanup, repair or replacement of property damaged by that person.”

SECTION 17. Section 5.38.036 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Fraud and cheating in obtaining accommodations. (a) Any person who shall obtain food, lodging or other accommodations with a value of ~~one~~ two hundred ~~fifty~~ dollars or less, at any inn, restaurant, hotel, boarding house,

apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper thereof, and shall fail or refuse to pay therefor, shall be deemed guilty of a misdemeanor.

(b) Any person convicted of violating Section 5.38.046 shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.”

SECTION 18. Section 5.42.005 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Definitions. As used in this chapter, the following terms shall have the following meanings:

(a) ‘Deception’ means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(b) ‘Deprive permanently’ means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(c) ‘Obtain’ means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(d) ‘Obtains or exerts control’ over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(e) ‘Owner’ means a person who has any interest in property;

(f) ‘Property’ means anything of value, tangible or intangible, real or personal;

(g) ‘Services’ means labor, professional services, cable television service, public or municipal utility or transportation service, telephone service, entertainment and the supplying of equipment for use.

(h) ‘Stolen property’ means property over which control has been obtained by theft.

(i) ‘Threat’ means a communicated intent to inflict physical or other harm on any person or on property.”

SECTION 19. Section 5.42.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Petit theft. Petit theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property:

(a) Obtaining or exerting unauthorized control over property or services having a value of less than one thousand dollars;

(b) Obtaining by deception control over property or services having a value of less than one thousand dollars;

(c) Obtaining by threat control over property or services having a value of less than one thousand dollars;

(d) Obtaining control over property or services having a value of less than one thousand dollars knowing the property to have been stolen by another.

Any person convicted of petit theft shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In addition, whenever any person is convicted of petit theft, the court shall order such person to be fingerprinted and photographed immediately following such conviction unless such person has already been photographed and fingerprinted when charged with the specific offense which is the subject of such conviction.”

SECTION 20. Section 5.42.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Prima facie evidence of intent to permanently deprive owner or lessor of possession, use or benefit of property. (a) In any prosecution under this title, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property to return the same within ten days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into

any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) The failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima

facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in this chapter, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service of cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured. Tampering includes, but is not limited to:

(1) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(2) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(3) Preventing any such meters from properly measuring or registering;

(4) Knowingly taking, receiving, using or converging to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or

(5) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

~~(b)~~ (d) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property at the address as it appears in the information supplied by such person at the time of such leasing or renting, or to such person's last known address.”

SECTION 21. Section 5.42.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Giving a worthless check. ~~(1)~~ (a) Giving a worthless check is the making, drawing, issuing, or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in,

or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

~~(2)~~ (b) Subsection (1) of this section shall apply if the check, draft or order is drawn for less than one thousand dollars.

~~(3)~~ (c) In any prosecution against the maker or drawer of a check, order or draft, payment of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with the drawee; ~~(a)~~ (1) unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding thirty dollars for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee; or ~~(b)~~ (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(d) As used in this section, the word 'notice' shall have the following meaning:

(1) 'Notice' includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States Mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order. Check is any check, order or draft on a financial institution. Financial institution means any bank, credit union, savings and loan association or depository.

~~(4)~~ (e) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

~~(a)~~ (1) Was postdated, unless such check, draft or order was presented for payment prior to the posted date; or

~~(b)~~ (2) Was given to a payee who had knowledge or had been informed when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

~~(5)~~ (f) Penalty. Any person convicted of giving a worthless check is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 22. Section 5.42.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful use of a financial card. ~~(4)~~ (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, or services ~~or communication services~~.

~~(a)~~ (1) Using a financial card without the consent of the card holder; or

~~(b)~~ (2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

~~(e)~~ (3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

~~(2)~~ (b) For the purposes of this section:

~~(a)~~ (1) 'Financial Card' means an identification card, plate, instrument, device, or number issued by a business organization authorizing the card holder to purchase, lease, or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

~~(b)~~ (2) 'Card holder' means the person or entity to whom or for whose benefit a financial card is issued.

~~(e)~~ (3) For the purposes of subsection ~~(1)~~ ~~(b)~~ (a) (2) hereof, a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

~~(3)~~ (c) Penalty. Criminal use of a financial card is a misdemeanor if the money, goods, property, or services ~~or communication services~~ obtained within a seven-day period are of the value of less than one thousand dollars. Any person convicted of criminal use of a financial card shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment."

SECTION 23. Section 5.42.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Theft of lost or mislaid property. Any person who fails to take reasonable measures to restore lost, ~~or~~ mislaid or property delivered to them by a mistake, to the owner, when the person has obtained control of such property, who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of such property, shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 24. Section 5.42.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Receiving stolen property. (a) A person commits the crime of receiving stolen property, with a value of less than one thousand dollars, if for the purposes of depriving the owner of a lawful interest therein, he or she receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

(b) Evidence of the following is admissible in any criminal prosecution pursuant to this section to prove the requisite knowledge or belief of the alleged receiver:

(1) That he or she was found in possession or control of other property stolen on separate occasions from two or more persons;

(2) That he or she received other stolen property in another transaction within the year preceding the transaction charged;

(3) That he or she acquired the stolen property for a consideration which he or she knew was far below its reasonable value;

(4) That he or she obtained control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce a person to believe the property was stolen.”

SECTION 25. Section 5.44 040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Illegal dumping. (a) It is unlawful to dump or cause to be dumped any wasted matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for the purpose by the governing body having charge of that property.

(b) Any person violating this section is guilty of a misdemeanor. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(c) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by the health department.

(d) Whenever waste dumped in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings which display the name of a person thereon, addressed to such person or in any other manner indicating that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter. Presumptions in this section may be overcome by proof that the person identified from the letter or other item caused the waste to be collected and transported for disposal at an approved site by a person licensed by the city to collect and dispose of solid waste.

(e) Any person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a first conviction, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction by a mandatory fine of not less than ~~five hundred~~ one thousand dollars nor more than ~~one~~ two thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon the trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation a person convicted under this section remove, or pay the cost of

removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other conditions of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than twelve hours.

(h) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in bulk quantities, tires, furniture, or appliances shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction shall be punished by a fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. ~~Upon a second or subsequent conviction of this subsection, the person convicted must serve at least five consecutive days imprisonment before the person is granted probation suspension or reduction of sentence or parole or is otherwise released.~~ If upon trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that

the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(i) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that the court may order that the defendant perform community service specified by the court in lieu of the mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed.“

SECTION 26. Section 5.66.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Criminal damage to property. ~~(1)(a)~~ Criminal damage to property is by means other than by fire or explosive:

~~(a)(1)~~ ~~Intentionally injuring,~~ Knowingly damaging, mutilating, defacing, destroying, or substantially impairing the use of any property, in which another has an interest without the consent of such other person; or

~~(b)(2)~~ ~~Injuring,~~ Damaging, mutilating, defacing, destroying or substantially impairing the use of any property, with intent to injure or defraud an insurer or lienholder.

~~(2)~~ (b) Criminal damage to property is a misdemeanor if the property damaged is of a value of less than one thousand dollars, or is of the value of one

thousand dollars or more and is damaged to the extent of less than one thousand dollars.

~~(3)~~ (c) Penalty. Any person who is convicted of criminal damage to property shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 27. Section 5.66.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Criminal trespass. Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person who knows he/she is not authorized or privileged to do so, and:

(a) Such person enters or remains therein in defiance of an order not to enter or to leave such premises on property personally communicated to such person by the owner thereof or other authorized person; or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entries; or

(c) Such person enters or remains therein in defiance of a restraining order issued pursuant to ~~section 5, section 6 of SB 474, K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, K.S.A. 38-1542, 38-1543, or 38-1563,~~ and any amendments to said statutory sections, and the restraining order has been personally served upon the person so restrained.

(d) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner.

(1) As used in this section:

(A) 'Health care facility'" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(B) 'Health care provider' means any person: (1) Licensed to practice a branch of the healing arts; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) licensed to practice dentistry; (5) licensed to practice optometry; (6) licensed to practice pharmacy; (7) registered to practice podiatry; (8) licensed as a social worker; or (9) registered to practice physical therapy.

(e) Any person who commits a criminal trespass with the corporate limits of the city of Wichita shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars

or imprisonment which shall not exceed six months, or by both such fine and imprisonment.

(f) Upon conviction of subsection (c) of this section, a person shall be sentenced to not less than forty-eight consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation, suspension or reduction of sentence. Such imprisonment may be served in work release or house arrest.”

SECTION 28. Section 5.66.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with the conduct of a lawful business. (a) Interference with the conduct of a lawful business is:

(1) ~~Intentional~~ Conduct at or in any building owned, operated or controlled by a private individual or corporation that knowingly causes an obstruction to or interference with the free and uninterrupted use of such property as a lawful business by any employee, patron, patient or other invitee on such premises, or which prevents the free and uninterrupted ingress, egress or regress therein, thereon or thereto;

(2) ~~Wilfully or intentionally~~ Knowingly refusing or failing to leave any such building owned, operated or controlled by a private individual or corporation upon being requested to do so by the owner thereof, any law enforcement officer or other authorized individual.

(b) Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, not more than two thousand five hundred dollars:

(2) Upon a second conviction, not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth conviction, not less than seven hundred fifty dollars nor more than two thousand five hundred dollars;

(5) Upon a fifth conviction, not less than one thousand dollars; nor more than two thousand five hundred dollars;

(6) Upon a sixth conviction, not less than one thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(7) Upon a seventh conviction, not less than one thousand five hundred dollars nor more than two thousand five hundred dollars;

(8) Upon a eighth conviction, not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred dollars;

(9) Upon a ninth conviction, not less than two thousand dollars nor more than two thousand five hundred dollars;

(10) Upon a tenth conviction, not less than two thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(11) And upon an eleventh or subsequent conviction, not less than two thousand five hundred dollars.

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six months, or by both such fines and imprisonment.

(c) The imposition of the fines established in subparagraphs (b)(2) through (11) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

(d) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section, conviction includes being convicted of a violation of this section, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 29. Section 5.68.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Patronizing a prostitute. Any person who patronizes a prostitute is guilty of a misdemeanor. For purposes of this chapter, "patronizing a prostitute" shall mean:

(a) Knowingly entering or remaining in a house of prostitution with the intent to engage in sexual intercourse or any unlawful sexual acts with a prostitute; or

(b) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act;

(c) Every person convicted under this section (5.68.020), shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(1) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(A) "Conviction" includes being convicted of a violation of this section.~~

~~(B) "Conviction" includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(C) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(D) It is irrelevant whether an offense occurred before or after conviction for a previous offense.”~~

SECTION 30. Section 5.68.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting prostitution. ~~(1)~~ (a) Any persons who knowingly committing any of the following acts when the prostitute is sixteen or more years of age, shall be deemed guilty of a misdemeanor.

~~(a)~~ (1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

~~(b)~~ (2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

~~(c)~~ (3) Procuring a prostitute for a house of prostitution;

~~(d)~~ (4) Inducing another to become a prostitute;

~~(e)~~ (5) Soliciting a patron for a prostitute or for a house of prostitution;

~~(f)~~ (6) Procuring a prostitute for a patron;

~~(g)~~ (7) Procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of assisting or promoting that person's engaging in prostitution; or

~~(h)~~ (8) Being employed to perform any act which is prohibited by this section.

~~(2)~~ (b) Every person convicted under this section (5.68.030) shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(a) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) 'Conviction' includes being convicted of a violation of this section.~~

~~(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(3) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 31. Section 5.68.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Soliciting for immoral purposes. ~~(1)~~ (a) It is unlawful to solicit any person upon the streets or in public places within the corporate limits of the city, to engage in an act of prostitution, sodomy or sodomy for hire.

~~(2)~~ (b) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

~~(a)~~ (1) "Public place" is any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and all public grounds, areas and parks.

~~(b)~~ (2) "Prostitution" is sexual intercourse for hire.

~~(c)~~ (3) "Sodomy" is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal.

~~(d)~~ (4) "Sodomy for hire" is an act of oral or anal copulation for hire.

~~(3)~~ (c) Any person violating the provisions of this section (5.68.110) shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months imprisonment or by both such fine and imprisonment; ~~however, upon a second or~~

~~a subsequent conviction under this section, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(a) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) "Conviction" includes being convicted of a violation of this section.~~

~~(2) "Conviction" includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(3) Only convictions occurring on or after the date this ordinance becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 32. Section 5.68.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Adultery. Adultery is sexual intercourse or sodomy by a person with another who is not his spouse if (a) such person is married; or (b) such person is not married and knows that the other involved in such intercourse is married; ~~and~~ and ~~Any~~ Any person who shall be deemed guilty of adultery shall be guilty of a misdemeanor, and any person convicted thereof shall be punished ~~in accordance~~

~~with Section 1.04.060 of this Code by a fine not to exceed five hundred dollars and/or imprisonment of thirty days or both such fine and/or imprisonment.”~~

SECTION 33. Section 5.68.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Lewd and lascivious behavior. Lewd and lascivious behavior is:

(a) Publicly engaging in otherwise lawful sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others who are sixteen or more years of age; or

(b) Publicly exposing a sex organ or exposing a sex organ in the presence of a person who is sixteen or more years of age, ~~who~~ is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

Any person committing lewd and lascivious behavior shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months; imprisonment, or both such fine and imprisonment.”

SECTION 34. Section 5.68.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting obscenity unlawful—Definitions—Evidence—Defense to prosecution—Exceptions—Penalty.

~~(1)~~ (a) It is declared to be unlawful to promote obscenity or to promote obscenity to minors. Promoting obscenity is ~~knowingly or~~ recklessly:

~~(a)~~ (1) Manufacturing, ~~issuing~~, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

~~(b)~~ (2) Possessing any obscene material or obscene device with intent to ~~issue~~, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or obscene device; or

~~(c)~~ (3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

~~(d)~~ (4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

~~(2)~~ (b) Evidence that materials or devices were promoted to emphasize their prurient appeal or sexual provocative aspect shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so ~~knowingly or~~ recklessly if:

~~(a)~~ (1) The materials or devices were promoted to emphasize their prurient appeal ~~or sexually provocative aspect~~; or

~~(b)~~ (2) The person is not a wholesaler and promotes the materials or devices in the course of the person's business.

~~(3)~~ (c) ~~(a)~~ (1) Any material or performance is "obscene" if:

~~(i)~~ a. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

~~(ii)~~ b. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

~~(iii)~~ c. Taken as a whole, a reasonable person would find that the material, or performance, lacks serious literary, educational, artistic, political or scientific value.

~~(b)~~ (2) 'Material' means any tangible thing which is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(3) 'Obscene device' means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

~~(e)~~ (4) 'Performance' means any play, motion picture, dance or other exhibition performed before an audience.

~~(d)~~ (5) 'Sexual intercourse' and 'sodomy' have the meanings provided by K.S.A. 21-3501-~~3504~~5501 and amendments thereto.

~~(e)~~ (6) 'Wholesaler' means a person who sells, distributes or offers for sale or distribution obscene materials only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

~~(4)~~ (d) It is a defense to a prosecution for obscenity that:

~~(a)~~ (1) The persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same.

~~(b)~~ (2) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

~~(c)~~ (3) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or

other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

~~(5)~~ (e) The provisions of this section which prescribe a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

~~(6)~~ (f) Promoting obscenity is declared to be a misdemeanor punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment. ~~Upon conviction for the second such offense committed within two years after conviction for the first offense, a fine shall be imposed in an amount not less than two thousand five hundred dollars nor more than five thousand dollars in addition to or instead of any confinement.~~

~~(7)~~ (g) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting

obscurity within two years after such conviction, he shall forfeit the recognizance.”

SECTION 35. Section 5.68.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting obscenity to minors—Defined—Defense to prosecution—

Penalty. ~~(1)~~ (a) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material, device, or a member of the audience of an obscene performance is a child under the age of eighteen years. Any material, device or performance is ‘obscene’ if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material, device or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, and that the material, device or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

~~(2)~~ (b) Notwithstanding the provisions of ~~K.S.A. 1969 Supp. 21-3202~~ K.S.A. 21-5204, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

~~(a)~~ (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more; or

~~(b) (2) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school~~ An exhibition in a state of nudity is for a bona fide scientific or medical purpose or for an educational or cultural purpose for a bona fide school, museum or library.

~~(3) (c) Promoting obscenity to minors is a misdemeanor, for the first offense, with a mandatory fine of not less than two thousand five hundred dollars nor more than five thousand dollars in addition to or instead of any imprisonment imposed upon conviction~~ punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

~~(4) (d)~~ Upon any conviction for promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, he shall forfeit the recognizance.”

SECTION 36. Section 5.68.156 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Displaying material harmful to minors. ~~(1)~~ (a) Definitions.

(1) ‘Blinder Rack’ means a device in which material is displayed in a manner that the lower two-thirds (2/3) of the material is not exposed to view;

~~(a)~~ (2) ‘Harmful to minors’ means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or with respect to a prosecution for an act described by subsection (2)(a) of this section, that portion of the material that was actually exposed to the view of minors, has the following characteristics:

~~(1)~~ a. The average adult person applying contemporary community standards would find that the material, device or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

~~(2)~~ b. The average adult person applying contemporary community standards would find that the material, device or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

~~(3)~~ (c) A reasonable person would find that the material, device or performance lacks serious literary, scientific, educational, artistic or political value for minors.

~~(b)~~ ~~"Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:~~

~~(1)~~ ~~The character and content of any material or performance which is reasonably susceptible of examination by the defendant; and~~

~~(2)~~ ~~The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.~~

~~(e)~~ (3) 'Material' means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, or recording tape, video tape.

~~(d)~~ (4) 'Minor' means any unmarried person under the age of eighteen years.

~~(e)~~ (5) 'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered

male genitals in a ~~discernibly~~ discernible ~~turgid~~ state of sexual excitement:-

(f) (6) 'Performance' means any motion picture, film, video tape, played record, phonograph, or tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(g) (7) 'Person' means any individual, partnership, association, corporation, or other legal entity of any kind.

(h) (8) A 'reasonable bona fide attempt' means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

(i) (9) 'Sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(j) (10) 'Sexual conduct' means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, ~~if such person be a~~ female's, breast.

(k) (11) 'Sexual excitement' means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

~~(2)~~ (b) Offenses. No person having custody, control or supervision of any commercial establishment shall knowingly:

~~(a)~~ (1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device; provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds of the material is not exposed to view;

~~(b)~~ (2) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material or device which is harmful to minors; or

~~(c)~~ (3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

~~(3)~~ (c) Defenses. It shall be an affirmative defense to any prosecution under this section that:

~~(a)~~ (1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

~~(b)~~ (2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

~~(e)~~ (3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

~~(d)~~ (4) With respect to a prosecution for an act described by subsection ~~(2)(e)~~ (b)(1) of this section, the allegedly harmful material was kept behind blinder racks.

~~(e)~~ (5) With respect to a prosecution for an act described by subsection ~~(2)(b)~~ (b)(1) or ~~(e)~~ (b)(2) of this section, the defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more.

~~(f)~~ (6) With respect to a prosecution for an act described by subsection ~~(2)(e)~~ (b)(3) of this section, the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

~~(4)~~ (d) The provisions of Section 5.68.156 shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting such

performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

~~(5)~~ (e) If any provision or clause of this Section 5.68.156 or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

~~(6)~~ (f) Penalties. Any person who shall be convicted of violating any provision of this section is guilty of a misdemeanor and shall be fined a sum not exceeding ~~five hundred~~ one thousand dollars and may be confined in jail for a definite term which shall be fixed by the court and shall not exceed ~~one~~ six months. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act, thing or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material shall constitute a single offense.”

SECTION 37. Section 5.68.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Sodomy for hire. (a) Any person who commits sodomy for hire is guilty of a misdemeanor.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.170), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

SECTION 38. Section 5.68.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Patronizing a person offering sodomy for hire. (a) Any person who patronizes a person offering sodomy for hire, as defined in Section 5.68.170, is guilty of a misdemeanor.

(b) For purposes of this section, "patronizing a person offering sodomy for hire" means knowingly hiring a person to engage in oral copulation or anal copulation.

(c) Every person convicted under this section (5.68.180), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence~~

~~of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence.”~~

SECTION 39. Section 5.68.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Promoting sodomy for hire. (a) Any person committing any of the following acts shall be deemed guilty of a misdemeanor:

(1) Establishing, owning, maintaining or managing a place where sodomy for hire is committed or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a place where sodomy for hire is committed;

(3) Procuring or inducing another to engage in sodomy for hire;

(4) Soliciting a patron for a person offering sodomy for hire;

(5) Procuring transportation for, paying for the transportation of or transporting a person within the city with the intention of assisting or promoting that person's engaging in sodomy for hire;

(6) Being employed to perform any act which is prohibited by this section.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform, an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.190), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence."~~

SECTION 40. Section 5.68.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Sodomy. (a) Any person who commits sodomy (1) with another person who is sixteen or more years of age and members of the same sex, or (2) with an animal, is guilty of a misdemeanor.

~~(a) For purposes of this section, 'sodomy' is oral or anal copulation between persons who are sixteen or more years of age and members of the same sex, or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the crime of sodomy.~~

(b) Every person convicted under this section shall be punished by a fine of not more than five hundred dollars, or by confinement for a period of six months, or by both such fine and imprisonment."

SECTION 41. Section 5.68.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Sexual battery. ~~(1)~~ (a) Sexual battery is the ~~unlawful, intentional~~ touching of ~~the person of another~~ a victim who is sixteen or more years of age,

who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

~~(2)~~ (b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars or twelve months imprisonment or by both such fine and imprisonment.”

SECTION 42. Section 5.68.215 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Anti-prostitution emphasis area—Enhanced penalties.

(a) The following described area of the city is designated to be an anti-prostitution emphasis area:

(1) An area bounded to the north at Twenty-First Street, on the east by Washington, on the south by Second Street, and on the west by Main Street, which becomes Park Place, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(2) An area bounded to the north at Waterman, on the east by Washington, on the south by Forty-Seventh Street South, and to the west by Wichita, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(3) An area bounded to the north by Thirteenth Street, on the east by Hillside, on the south by Second Street, and on the west by

Cleveland, which encompasses all areas within those parameters, and including the property on both sides of each of the boundary streets.

(b) Any person who commits an unlawful act of prostitution, or a prostitution-related act within the area set forth in subsection (a) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars or one year's imprisonment, or by both such fine and imprisonment. Upon a ~~first~~ conviction of a violation of this section, the court shall impose a fine of not less than two hundred dollars nor not more than five hundred one thousand dollars, and a mandatory jail sentence of not less than ~~five consecutive days nor more than six months'~~ one year imprisonment or both such fine and/or imprisonment. ~~Upon a second conviction of a violation of this section, the court shall impose a fine of not less than five hundred dollars nor more than one thousand dollars and a mandatory jail sentence of not less than thirty consecutive days nor more than one year's imprisonment. Upon a third or a subsequent conviction of a violation of this section, the court shall impose a fine of not less than one thousand dollars nor more than two thousand five hundred dollars and a mandatory jail sentence of not less than ninety consecutive days nor more than one year's imprisonment. No person shall be eligible for probation or parole until serving the entire minimum sentence.~~

(c) For the purposes of this section, an unlawful act of prostitution or a prostitution-related act shall include the following sections of this code, and any

amendments thereto: 5.68.010 (prostitution), 5.68.020 (patronizing a prostitute), 5.68.030 (promoting prostitution), 5.68.110 (soliciting for immoral purposes), 5.68.170 (sodomy for hire), 5.68.180 (patronizing a person offering sodomy for hire), 5.68.190 (promoting sodomy for hire), 5.68.200 (sodomy), or 5.68.210 (loitering for the purpose of solicitation).

~~(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, it is irrelevant whether an offense occurred before or after conviction for a previous offense.~~

~~(e) The imposition of the fines established in subsection (b) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that defendants who are in violation of this section due to their commission of an act in violation of Sections 5.68.101 (prostitution), 5.68.110 (solicitation for immoral purposes) or 5.68.170 (sodomy for hire) shall be eligible to have such fines suspended by their agreement to enter and successfully complete a court ordered program of treatment and supervision. The court may also order that any defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) of this code and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.~~

(f) (d) If any subsection, clause or provision of this section is for any reason held illegal, invalid or unconstitutional, such action shall not affect the remaining provisions of this section which shall remain valid to the extent possible.”

SECTION 43. Section 5.72.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

~~“Obstructing legal process or official duty~~ **Interference with Law Enforcement.** (a) Interference with law enforcement is falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency acts in reliance or upon such information; or

(a) ~~Resisting Police Officers. It is unlawful for any person to resist or oppose any police officer in the discharge of any official duty.~~

(b) ~~Obstructing Legal Process or Official Duty. Obstructing legal process or duty is k~~Knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(c) ~~Violation—Penalty.~~ Any person violating any provision of this section of the code is guilty of a misdemeanor and shall be punished by a fine of not more than two thousand five hundred dollars and/or an imprisonment of not more than one year and/or both such fine and imprisonment."

SECTION 44. Section 5.73.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Rioting. ~~(1)~~ (a) Riot is:

(1) five or more persons acting together without lawful authority engaging in any use of force or violence which produces a breach of the public peace, or

(2) any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, ~~by five or more persons acting together and without authority of law.~~

~~(2)~~ (b) Any person who violates the provisions of this section within the corporate limits of the city is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed ~~one~~ two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 45. Section 5.75.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with conduct of public business—Defined. Interference with the conduct of public business in public buildings is:

 (a) Conduct at or in any public building owned, operated or controlled by the city or any of its political subdivisions so as to ~~willfully~~ knowingly deny to any public official, public employee, or any invitee on such premises, the lawful

rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building; or

(b) ~~Wilfully~~ Knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof; or

(c) ~~Wilfully~~ Knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building; or

(d) ~~Wilfully~~ Knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session; or

(e) ~~Wilfully~~ Knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.”

SECTION 46. Section 5.75.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Interference with conduct of public business—Misdemeanor.

Interference with the conduct of public business in public buildings is a misdemeanor.

Upon conviction such person shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or one year imprisonment or both such fine and imprisonment.”

SECTION 47. Section 5.82.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Telephone service—Interfering with. ~~(1)~~ (a) It is unlawful for any person to use, ~~cause to be used, or knowingly permit another to use,~~ any telephone instrument, telephone equipment, ~~or~~ telephone facilities or telefacsimile communication device for any of the following purposes:

~~(a)~~ (1) ~~Knowingly Making~~ make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

~~(b)~~ (2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

~~(c)~~ (3) Making or causing the telephone of another repeatedly to ring or repeatedly transmit a telefacsimile communication; with intent to harass any person at the called number; or

~~(d) Making repeated telephone calls, during which conversation ensures, solely to harass any person at the called number; or~~

~~(e) (4) Knowingly Playing~~ any recording on a telephone,
except recordings such as weather information or sports information when
the number thereof is dialed unless the person or group playing the
recording shall identify itself or himself or herself and state that it is a
recording; or

~~(f) Impairing, injuring or damaging the business of any person at the
number called;~~

(5) Knowingly permit any telephone or telefacsimile
communication under one's control to be used in violation of this section.

(b) As used in this section 'telefacsimile communication' means the
use of electronic equipment to send or transmit a copy of a document via
telephone line.

~~(2) (c)~~ Any person who shall commit an act prohibited by ~~subsection (1)~~
~~of~~ this section shall be punished by a fine of not more than two thousand five
hundred dollars or by one year imprisonment, or by both such fine and
imprisonment.”

SECTION 48. Section 5.85.010 of the Code of the City of Wichita, Kansas, is hereby
created to read as follows:

“Unlawful Interference with a Firefighter. Unlawful Interference
with a firefighter is knowingly:

(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties;

(b) Obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency; or

(c) Unlawful interference with a firefighter is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 49. Section 5.85.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Interference with Emergency Medical Services Personnel.

(a) Unlawful interference with an emergency medical services attendant is knowingly:

(1) Interfering with any attendant while engaged in the performance of such attendant's duties; or

(2) Obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) Unlawful interference with an emergency medical services attendant is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 50. Section 5.88.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Unlawful discharge of a firearm, air rifles, pellet guns and BB guns.

~~(1)~~ (a) It is unlawful for any person to discharge or fire any gun, pistol, air rifle, pellet gun, BB gun or any other firearm within the corporate limits of the city except at any properly licensed shooting gallery or upon a pistol range or at a gun club, either of which shall be approved by the chief of police.

~~(2)~~ (b) This section shall not apply to law enforcement officers while actually engaged in the performance of such officer's duty.

~~(3)~~ (c) This section shall not apply to health officers while actually engaged in the performance of such officer's duty.

~~(4)~~ (d) This section shall not apply to historical re-enactors and actors when engaged in performances and demonstrations when the powder charge does not exceed thirty grains for pistols, sixty-five grains for long guns and one-quarter pound for cannon, and the gun contains no projectile other than the minimum amount of wadding necessary to hold the powder charge in place. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or the city managers designee.

~~(5)~~ (e) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(6)~~ (f) In addition to the penalty for the violation of this section, it shall be the duty of the municipal court judge to order any weapon seized in connection with such violation to be forfeited to the city and the same shall be disposed of by the chief of police pursuant to Section 5.88.010~~(8)~~(11).”

SECTION 51. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Air rifles, pellet guns and BB guns—Carrying within the city.

~~(1)~~ (a) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.

~~(2)~~ (b) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(3)~~ (4) In addition to the penalty for the violation of this section, the municipal court judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010~~(8)~~(11).”

SECTION 52. The originals of Sections 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170,

5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 and 5.88.030 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 53. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once of a summary of the ordinance, in the official city paper. Publication shall occur after July 1, 2012 and comply with the provisions of House Bill 2166 (2012).

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and City Council

SUBJECT: E-Citation Program

INITIATED BY: Wichita Police Department, Information Technology and Municipal Court

AGENDA: Unfinished Business

Recommendation: Approve contract negotiations with Brazos Technologies to provide e-Citation hardware and software services which will be reviewed and approved as to form by the Law Department, approve the funding sources for the project, and authorize any necessary budget adjustments.

Background: This project was considered by the City Council on April 10, 2012 and deferred to the May 1, 2012 so that staff could gather budget analysis information for the Council.

The Wichita Police Department and Wichita Municipal Court are working toward the implementation of automated citations. A City-wide Environmental Scan conducted by Wichita State University identified e-Citations as a cost-saving, innovative technology. The e-Citation Program would enhance the Department's Comprehensive Traffic Safety Plan. The plan contains four significant elements; Education, Environment, Technology and Equipment. Electronic citations reduce the time officers spend on traffic stops, increase the safety of the officer and the motorists and create efficiencies that would make officers available for additional calls.

Electronic citations also improve efficiency in Municipal Court by eliminating data entry errors. The e-Citation program will enable the Wichita Municipal Court to adjudicate traffic violations and provide customer service to citizens in a more efficient manner.

Analysis: After securing funding for the e-Citation Program, a Request for Proposals was created and released in December, 2011. A staff screening and selection committee comprised of representatives from Police, Law, Municipal Court, Public Works, IT/IS and Finance was formed. A total of five firms responded to the request for proposals. The solutions proposed by the respondents were evaluated by the committee.

The committee unanimously selected Brazos Technologies due to their established work history, existing client base, reputation for providing quality customer service and expandability. Additionally, Brazos Technologies was selected for the police/court project due to their having previously worked with organizations using the E*Justice records management system. It was determined that Brazos Technologies provided the opportunity to successfully implement and support the e-Citation project. Benefits of using e-Citations are; enhanced efficiency, productivity, officer/citizen safety, and increased accuracy. Contract negotiations with Brazos are underway.

Financial Considerations: The e-Citation project is estimated to cost \$504,300. The startup funding for the project will be split between the Police Department, Municipal Court and IT/IS. The three departments have collaborated and agreed on the following arrangement.

Police	2011 JAG Grant Funds	\$150,000
Municipal Court	Technology Project Fund	\$177,150
IT/IS	Software Replacement Fund	<u>\$177,150</u>
		\$504,300

The Police Department will contribute \$150,000 from the 2011 Federal Justice Assistance Grant. The Municipal Court's share will be funded from the Municipal Courts Computer System Project Fund. IT/IS will fund \$177,150 from the IT/IS Software Replacement Fund. The IT/IS contribution amount will be paid back through an annual transfer from the General Fund Operating Budget.

The pre-negotiation proposal provided by Brazos Technologies was \$458,405; with additional implementation costs, the cost of the proposal is estimated at \$504,300.

The annual license and maintenance fees will be recovered through IT charges. The proposed cost of the annual license and maintenance fees is \$51,300. The first year of licenses and maintenance fees is built into the initial bid. The ongoing annual license and maintenance fees of \$51,300 will start in year two. These costs will be recovered through IT charges to the Police Department.

A return on investment analysis indicates a payback in less than two years with breakeven occurring in 2013-14. Increased annual efficiencies provide significant return with the elimination of existing software maintenance and one court clerk position. Additionally, the City will realize benefit from eliminating the Municipal Court estimate of 1% of tickets that would otherwise be dismissed due to errors. The cumulative benefits begin in 2012-14 and increase substantially in each subsequent year.

Goal Impact: Under the City of Wichita's Safe and Secure Initiative, the e-Citation program will help to insure the Police Department can continue its emphasis on the Comprehensive Traffic Safety Plan through the use of technology to improve service. In addition, the e-Citation program will enable the Wichita Municipal Court to adjudicate traffic violations and provide customer service to citizens in a more efficient manner.

Legal Considerations: The contract negotiated with Brazos Technologies will be reviewed and approved to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve contract negotiations with Brazos Technologies to provide e-Citation hardware and software services which will be reviewed and approved as to form by the Law Department, approve the funding sources for the project, and authorize any necessary budget adjustments.

Attachments: e-Citations cost benefit model



E-CITATIONS COST – BENEFIT MODEL

APRIL 20, 2012

The Wichita Police Department, in conjunction with IT/IS and Municipal Court, have proposed a new e-Citation ticketing system for use by officers enforcing traffic ordinances. The system would largely replace the current inefficient and laborious process of issuing a citation and entering the citation in the City's public safety computer system. It is expected to allow staff to provide better service to customers, to free up existing resources for reallocation to other duties, and to provide a net positive financial impact.

Customer Service Improvements - Hand written citations can be challenging for customers to read. e-Citations will be machine generated, in standardized computer generated font. Hand written tickets have an error rate estimated at 3.5% currently. This complicates the adjudication process for customers and requires additional staff time. Finally, it may take several days for a ticket to be entered into the City's computer system so a customers can pay the citation or set it for court. This is inconvenient for customers seeking to promptly discharge their citation, and can be frustrating for customers that appear in City Hall to pay a fine or get a court date, only to be told their citation hasn't been entered yet.

Re-allocation of Resources - Issuing a citation manually can be laborious. With an electronic system, the process of issuing a citation will occur much quicker. Staff estimates that reducing the average time required to issue a citation would free up the time equivalent of nearly 3 officers, freeing up that resource and providing more time to answer calls for service and proactively patrol or conduct other police related duties.

Intangible Benefits - Decreasing the time performing a concentrated task when in contact with a potentially aggravated customer enhances officer safety. In addition, parking vehicles on the side of a roadway (during a traffic stop) is inherently dangerous. Reducing the amount of time that a patrol car and a customer's vehicle are involved in a traffic stop minimizes this danger, primarily for the officer, but also for the citizen.

Estimated Financial Impact - e-Citations is expected to provide tangible financial benefits totaling \$1.4 million over the next five years, primarily by reducing the citation error rate, reducing a position in Court, and enhancing traffic safety enforcement. Maintenance costs are expected to total \$205,200, with the repayment of IT/IS funds costing an additional \$177,150. This results in a positive estimated benefit of over \$1 million over five years. If the commitment of grant funds and the Court technology funds (both of which are in effect dedicated for this purpose) were included in the analysis, the net benefit would be slightly more than \$700,000 over the five year period.

E-CITATIONS COST – BENEFIT MODEL

Estimated General Fund Financial Impact of e-Citations					
	2013	2014	2015	2016	2017
IT Recover of initial investment	35,430	35,430	35,430	35,430	35,430
e-Citations maintenance		51,300	51,300	51,300	51,300
Auto Cite Maintenance	(3,300)	(3,300)	(3,300)	(3,300)	(3,300)
Court clerical costs	(50,290)	(51,990)	(53,550)	(55,160)	(56,810)
Error rate reduction	(56,470)	(56,470)	(56,470)	(56,470)	(56,470)
Enhanced enforcement	(175,000)	(175,000)	(175,000)	(175,000)	(175,000)
Estimated GF impact	(249,630)	(200,030)	(201,590)	(203,200)	(204,850)

IT/IS Cost recovery - The initial purchase of e-citations is financed with \$177,150 from IT's Software Replacement Fund. This account is replenished by fees charged to user departments. The model assumes a payback over five years.

e-Citation Operating Costs - The vendor maintenance cost is estimated at \$51,300 annually, with the first year provided within purchase price.

Auto-Cite Maintenance Savings - The e-Citations equipment will replace the current automated ticketing equipment used by parking control staff. This obviates the need for maintenance of that system (\$3,300 annually), and also the future need to replace those devices.

Court Clerical Costs - Court staff currently manually enter citations into the computer. This takes on average 3 minutes per citation. This time should drop considerably with e-Citations. Court estimates that one staff could be deleted, saving around \$50,000 annually.

Error Reduction Rate - Errors are generated from data being inaccurately transcribed from a driver's license, or from illegible handwriting. Both would largely be eliminated by e-Citations. Errors often result in citations being set for court, causing inconvenience for customers and additional work for staff. Often, citations with errors are dismissed. With e-Citations, the number of citations dismissed due to errors is expected to decrease, resulting in additional fines collected by the City.

Enhanced enforcement - By improving the efficiency with which citations can be issued, staff estimated that additional enforcement will take place. This should reduce traffic accidents and fatalities. Assuming the enhanced enforcement results in a 2.5% increase in citations issued, an additional \$175,000 is estimated to be generated annually.

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Greenway Park Apartments (District III)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning codes, ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement, approve the issuance of a letter of intent to issue industrial revenue bonds in an amount not-to-exceed \$6,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

Background: The Housing Tax Credit Program is administered by the Kansas Housing Resources Corporation. Enacted in the Tax Reform Act of 1986, the Housing Tax Credit Program is designed to secure private equity capital for the development of affordable rental housing. The Program can provide as much as 55%-60% of the total development cost, which reduces the amount of debt financing in affordable rental housing developments. This allows lower rents and greater affordability. The State receives a tax credit allocation from the Federal government, and requires developers/owners to obtain a resolution of support from the local government, when submitting applications for financing through the program.

The City has received a request from Intercontinental Affordable Housing, for a City Council resolution of support for its application for 4% Housing Tax Credits in connection with the acquisition and renovation of the Greenway Park Apartments. The developer is also requesting a letter of intent to issue industrial revenue bonds (IRBs) in an amount not to exceed \$6,000,000.

Under the City's adopted Housing Tax Credit (HTC) Policy, developers/owners must present proposed Housing Tax Credit projects to the applicable District Advisory Board (DAB). The policy also requires a review by the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for zoning and design appropriateness and provide comment regarding consistency with neighborhood plans, if applicable. Once the project is reviewed by the DAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the Housing Tax Credit application.

Analysis: The Greenway Park Apartments complex is located at 404 W. Pawnee. According to the documentation submitted in connection with the request, the apartment complex offers a total of 91 one-bedroom/one bathroom units, which are 567 square feet in size. The project scope involves general renovation, including repairs to stucco and vinyl siding, new carpet in units and common areas, replacement of refrigerators/appliances as needed, installation of new kitchen cabinets, interior/exterior painting, new HVAC systems, replacement of light fixtures as needed, minor landscape updating and parking lot repairs/upgrades.

The City's HTC Policy requires a set-aside of 20% of the units for market-rate tenants. The developer is requesting waiver of this requirement, because the project is currently subject to a U.S. Department of Housing and Urban Development Project-Based Rental Assistance Contract. The City's Housing Tax

Credit Policy includes a provision for a waiver of the market-rate unit requirement when the property is subject to this type of contract. Under these agreements, tenant-occupants typically pay an amount equivalent to 30% of their monthly income toward the contract rent, and the balance is paid through the rental assistance contract. Contract rent for the units is currently \$570 per month. The apartment complex will exclusively serve senior citizens and individuals with disabilities. Both are considered to be special needs populations under the City's policy, providing additional basis for the waiver.

The Planning Department has reviewed the proposed project and has confirmed that the current land use is consistent with the zoning designation for the site. Planning staff also considers the project to be consistent with the Wichita-Sedgwick County Comprehensive Plan Functional Land Use Map, the South Central Neighborhood Plan, and with the existing development pattern in the immediate area.

The City's Office of Central Inspection (OCI) has reviewed the proposed project. OCI has advised that any proposed parking lot upgrades that include parking areas that serve public spaces, such as a community room or community laundry facilities, may make it necessary for those parking spaces/areas and paths of travel to be upgraded to Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards.

The Development Coordinating Committee voted to recommend adoption of the resolution of support, and DAB III voted (8-0) to recommend adoption of the resolution of support.

Housing and Community Services believes that the proposed project will improve the existing site and buildings involved, and will provide safe, clean affordable rental housing. Staff recommends adoption of the resolution of support by the City Council.

The resolution of support will not constitute final plan or design approval. If the project is awarded Housing Tax Credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's Housing Tax Credit Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Under federal law, a developer must use tax-exempt bonds to finance multi-family housing projects in order to qualify for 4% housing tax credits. The City's economic development incentive policy allows the issuance of IRBs for this purpose, provided that the property shall not receive property tax abatements, and provided that the cost of rehabilitation will be a minimum of 20% of the acquisition cost. Property purchased with bond proceeds, such as construction materials and furnishings, is eligible for sales tax exemption, with the authorization of the City Council. The developer has agreed to comply with the City's letter of intent conditions for the issuance of the IRBs.

Vetting of the developer was conducted by Office of Urban Development staff. There were no outstanding issues noted.

Financial Considerations: The total project cost is estimated to be \$7,861,886, including approximately \$2,026,178 in rehabilitation/construction-related expenses. The developer intends to finance the project utilizing funding from the sale of 4% housing tax credits, debt financing, seller financing, and deferred developer fees. The 4% housing tax credits do not involve a competitive application process but require the issuance of tax-exempt qualified residential housing bonds for the debt-financed portion of the project, which is estimated to be \$6,000,000 for this project. The developer agrees to pay all of the City's costs associated with the issuance of the IRBs and to pay the City's \$2,500 annual administrative service fee.

Goal Impact: The proposed project contributes to the Economic Vitality and Affordable Living goals by creating affordable housing.

Legal Considerations: The Law Department has reviewed the resolution document and approved it as to form. The law firm of Kutak Rock, LLP will serve as bond counsel in the transaction. The Law Department will review and approve the form of all bond documents prior to the issuance of any bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, subject to all local building and zoning ordinances and any additional design review requirements, with waiver of the 20% market-rate unit requirement, approve the issuance of a letter of intent to issue industrial revenue bonds in the amount not-to-exceed \$6,000,000, and the application for a sales tax exemption certificate, and authorize the necessary signatures.

Attachments: Resolution document and request for IRB Letter of Intent.



2090 N. Tustin Ave., Suite 250-B *Santa Ana * CA * 92705
Tel: 714.547.7721 Fax: 714.547.0751

April 16, 2012

Mayor Carl Brewer and
Members of the City Council
City of Wichita
City Hall
455 North Main
Wichita, KS 67202

Re: Proposal to City of Wichita, Kansas
Requesting Industrial Revenue Bonds
(Greenway Park Apartments)

Honorable Mayor Brewer and Members of the City Council;

Pursuant to the City of Wichita's Policies and Procedures established by its governing body, Intercontinental Affordable Housing, Inc. a California Nonprofit Public Benefit Organization submits this request to obtain the City of Wichita's approval on the submitted Letter of Intent requesting issuance of Industrial Revenue Bonds in an amount not to exceed \$6,000,000. The following information supporting our request is submitted:

- **Acquiring Entity Name and Address**

Greenway, LP, a Kansas Limited Partnership
IAHI-Greenway, LLC, a Kansas Limited Liability Company; its General Partner
Intercontinental Affordable Housing, Inc; a California Nonprofit Organization; its Sole Manager
2090 N. Tustin Avenue
Suite 250-B
Santa Ana, CA 92705

Greenway, LP will hold title to the real estate to Greenway Way Park Apartments ("Project").

- **Principal Directors and Officers**

Jey Samuel	Director/President	2090 N Tustin Ave, Suite 250-B, Santa Ana 92705
Scott Park	Director/Treasurer	2090 N Tustin Ave, Suite 250-B, Santa Ana 92705
JC Chavez	Secretary	2090 N Tustin Ave, Suite 250-B, Santa Ana 92705
Johnathan Hawke	Director/VP	2090 N Tustin Ave, Suite 250-B, Santa Ana 92705

- **Business General Description**

Intercontinental Affordable Housing Inc., ("IAHI") is a California based not-for-profit organization (501 (c) 3), which aims to help low income family households find clean, quality affordable housing.

The organization's overall mission is to acquire existing "at risk" affordable housing from private investors or partnerships that seek to "opt-out" from current restrictive affordable housing covenants. Through these endeavors, IAHI will be able to keep this portion of the community as affordable housing stock through extension of the affordability covenants for an additional 55 years. These acquisitions will be facilitated through creative deal making along with the use of a variety of funding sources, including low income housing tax credits, tax exempt bonds, and available grants and loans available to non-profits.

Intercontinental Affordable Housing Inc. was incorporated in 1983 with the initial mission of procuring and creating affordable housing. Currently, IAHI will be expanding its role to cultivate and develop resident interests and social programs, and strive to promote improved living environments in addition to pursuing its current acquisition goals. IAHI will implement resident programs that will provide education assistance, community interaction, and job counseling and placement assistance to promote sustainable communities, ESL classes and empower residents.

- **Project Description and Proposed Improvements**

Greenway Park Apartments, built in 1979, is a project-based, Section 8 apartment project which serves the city's senior's community. The property consists of a three-story low rise apartment building and is primarily utilized as elderly and/or disabled tenant housing. The building consists of three wings; a central wing, oriented east to west, which contains the main entrance, the leasing office, and the majority of the common area amenities; a west wing, which is oriented north to south, and generally begins at the southern face of the central wing and extends to the north; and an east wing, which is also oriented north to south, but generally begins at the northern face of the central wing and extends to the south.

- **Specific Location of the Project**

The Project is located at 404 West Pawnee Street and consists of 91-units, 90 of which are subject to an existing HAP Agreement with HUD. The other unit is utilized as a managers unit. The net rentable area is approximately 54,000 square feet and the gross building is approximately 75,000 square feet.

Unit Type	# of Units	Unit Size (sf) (Approximate)
1bd 1ba	91	567



2090 N. Tustin Ave., Suite 250-B *Santa Ana * CA * 92705
Tel: 714.547.7721 Fax: 714.547.0751

- **Benefits of the Project**

Issuance of the proposed Bonds will permit Greenway, LP to acquire the property and rehabilitate it to extend the useful life of the building without displacement of tenants. Make repairs and provide needed upgrades to the inside and outside of the tenant's units; the interior and exterior of the buildings, the common areas and the amenities. It will also permit the building to remain as an affordable housing project and eligible to continue receiving the rent subsidies from the US Department of Housing and Urban Development ("HUD").

- **Amount of Bonds Requested**

The principal amount of bonds requested will not exceed \$6,000,000.

- **Use of Bond Proceeds**

Bond proceeds will be used to complete the acquisition and rehabilitation of the Project as follows:

Development Acquisition	\$7,000,000	
Construction Cost and Related Costs	\$2,026,178	
Cost of Issuance and Syndication Costs	<u>\$1,941,301</u>	
Total Needed		\$10,967,480

Less:

Low Income Housing Tax Credits	\$3,376,934
Deferred Developer's Fee	\$ 630,246
Seller's Note	<u>\$ 960,300</u>
Total	\$4,967,480

Bonds	<u>\$6,000,000</u>	
Total		\$10,967,480

- **Underwriting Agreement**

Bonds will be sold by Merchant Capital who will be the underwriter.



2090 N. Tustin Ave., Suite 250-B *Santa Ana * CA * 92705
Tel: 714.547.7721 Fax: 714.547.0751

- **Bond Counsel**

Greenway, LP recommends the use of Kutak Rock, LLP as Bond Counsel. Its contact information is below. Should the City of Wichita desire to use an alternative Bond Counsel, Greenway, LP will be open to use said appointed Bond Counsel. Greenway, LP agrees to pay all costs incurred by the City of Wichita relating to the issuance of the Bonds regardless of obtaining approval or issuance.

Dorothea Riley
Kutak Rock LLP
1010 Grand Blvd., Suite 500
Kansas City, MO 64106
(816) 960-0090
dotty.riley@kutakrock.com

- **Ad Valorem Taxes**

Greenway, LP through its non-profit general partner operating housing for the elderly is generally exempt from ad valorem taxes pursuant to Kansas law. Upon acquisition, Greenway, LP will seek abatement for the property as it is currently owned by a for profit entity.

- **City Administrative Fees**

Greenway, LP agrees to make administrative fee payments to the City of Wichita in for the duration of the Bonds and to cover any and all costs incurred by the City of Wichita relating to the issuance of the Bonds whether or not they are approved or issued.

- **Effects of the Proposed Project on the Ambient Air Quality of the City of Wichita and Sedgwick County.**

The proposed Project will have no significant adverse effect on the ambient air quality of the City of Wichita or Sedgwick County.

- **Bond Counsel Name and Address**

Dorothea Riley
Kutak Rock LLP
1010 Grand Blvd., Suite 500
Kansas City, MO 64106
(816) 960-0090
dotty.riley@kutakrock.com

- **Name and Address of Special Counsel**

Intercontinental will not use the services of a Special Counsel.

- **Name and Address of General Counsel**

Robert L. Kinkle
400 Oceangate
Long Beach, CA 90802
Tel: 562.216.2612
Email: kinklelaw@gmail.com

- **Name and Address of Bank Participant**

Wells Fargo Bank
333 Market Street
San Francisco, CA 94105
Tel: 415.371.3365
Kerri S. Jones
Vice President

- **Equal Employment Opportunity**

Greenway, LP agrees to comply with all applicable policies established by the federal government and the City of Wichita with respect to equal employment opportunity and to submit an Equal Employment/Affirmative Action Plan to the City of Wichita for approval.

- **Financial Information**

Greenway, LP is acquiring the property and has obtained a copy of the existing owner's financial statements enclosed herewith.

- **Environmental Site Assessment**

Greenway, LP will request a Phase I environmental site assessment report as part of the acquisition/rehabilitation process and shall provide a copy to the City of Wichita if so requested.

- **Selection of Trustee**

Greenway, LP agrees that so long as the Bonds remain outstanding, it will not have a commercial banking relationship with the Trustee designated pursuant to the Indenture, unless the Bonds are privately placed. (Note: The Bonds requested will be privately placed.)



2090 N. Tustin Ave., Suite 250-B *Santa Ana * CA * 92705
Tel: 714.547.7721 Fax: 714.547.0751

In order to complete and finalize the arrangements with respect to the Project, it is requested the City Council authorize the Mayor to execute a Letter of Intent, for an on behalf of the City of Wichita, whereby the City of Wichita will indicate its intent to issue its Private Placement Industrial Revenue Bonds for the purposes described herein.

Greenway, LP is aware that such Letter of intent is only an indication of the City of Wichita's intent to issue the Bonds to assist in financing the proposed Project, and that issuance of the Bonds remains subject to final agreement on the terms and conditions of the Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty Agreement and other related documents. However, upon issuance of such Letter of Intent, Greenway, LP is prepared to proceed in reliance thereon.


Should additional information be needed please contact Jey Samuel at 714.547.7721 or via email jsamuel@icaff.org.

Sincerely,

Greenway, LP
A Kansas Limited Partnership

By: IAHI-Greenway, LLC
A Kansas Limited Liability Company

By: Intercontinental Affordable Housing, Inc
A California Nonprofit Public Benefit Organization

By: 
Jey Samuel
Its President

RESOLUTION NO. 12-097

A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas has been informed by Intercontinental Affordable Housing, that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lot 1, Greenway 2nd Addition to Wichita, Sedgwick County, Kansas

WHEREAS, this resolution shall apply to 91 apartment units, with one unit to be utilized as a management office, all to be assisted with subsidies provided under the Housing Tax Credit Program, for the purpose of acquiring and renovating said apartment complex, with the renovation project to include repairs to stucco and vinyl siding, new carpet in the apartment units and common areas, replacement of refrigerators/appliances as needed, installation of new kitchen cabinets, interior/exterior repainting, new HVAC systems, installation of a security camera system, replacement of light fixtures as needed, minor landscape repairs/updating and parking lot repairs.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until May 1, 2014. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit.

All projects must comply with all applicable building codes, zoning codes, ordinances, and requirements.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this
1st day of May, 2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and City Council

SUBJECT: HUD Consolidated Plan/Fourth Program Year Action Plan, 2012-2013

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Close the public hearing and authorize submission of the 2012-2013 Fourth Program Year Action Plan Community Development Block Grant, HOME Investment Partnerships, and Emergency Solutions Grant Funds to the U.S. Department of Housing and Urban Development (HUD), and authorize the release of Requests for Proposals, necessary signatures, agreements and contracts.

Background: The U.S. Department of Housing and Urban Development (HUD) provides annual funding for programs that serve or benefit low to moderate-income persons. This funding is part of the HUD Consolidated Plan process that requires the City of Wichita to submit annual amendments to the Five-Year Consolidated Plan, outlining specific activities to be funded through the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and Emergency Solutions Grant (ESG) programs for each of the five years covered in the plan.

On January 17, 2012, HUD announced the following funding levels for FY 2012-2013: CDBG - \$2,569,751, HOME - \$1,223,447, and ESG \$223,388. In addition, HUD announced that an additional \$70,302 for the Emergency Solutions Grant program will be available for the remainder of 2011-2012. Staff issued Requests for Proposals and applications and conducted a review of responses for CDBG Public Services and HOME housing development funding. Documents were forwarded to the City Council-appointed Grants Review Committee (GRC) for review and recommendations. The GRC held one public hearing during which all qualified proposals were presented for discussion. The GRC considered all written and oral information received, and submitted funding recommendations to the City Manager.

On March 20, 2012, the City Council approved recommendations for the 2012-2013 expenditures for CDBG and HOME Investment Partnerships, and the spending plan for ESG funds. That action also authorized the required 30-day public comment period, which ended April 19, 2012.

Analysis: This plan was made available to the public for comment during the 30 day period. Comments were received relative to internal administration of the summer youth employment program. The comments were from a previously funded agency, for consideration of continued external administration of this program. No changes were made to the 2012-2013 spending plan based on these comments.

Following is a summary of the 2012-13 spending plan.

Community Development Block Grant

Capital Projects: \$75,000

Funds will pay for street and sidewalk repairs in eligible areas. The exact locations will be determined in consultation with Public Works and Utilities Department staff.

Housing Projects: \$1,065,313

Funds will pay for Neighborhood Improvement Services (\$965,313) as well as demolition and clearance of unsafe structures in eligible neighborhoods (\$100,000).

City Manager's Office-Neighborhood Assistants: \$331,757

Funds will pay for neighborhood assistants in Districts 1, 3, 4 and 6.

Housing and Community Services: \$118,593

Funds will pay for Housing First program staff (\$68,593) and job training (\$50,000).

Women's Shelter Services: \$275,000

Purpose: to provide temporary shelter, counseling and other support services for an average of 350 women and children who are fleeing domestic violence situations.

Agency	2011-12 Allocation	2012-13 Allocation
Catholic Charities	\$125,125	\$110,000
StepStone	NA	\$26,000
YWCA	\$149,875	\$139,000

Youth Crime Prevention and Enrichment: \$125,000

Purpose: to engage middle school age youth with identified risk factors in activities that will prevent crime and enrich their lives.

Agency	2011-12 Allocation	2012-13 Allocation
Big Brothers, Big Sisters	0	\$0
Boys & Girls Clubs	\$25,000	\$0
Rainbows United	\$38,472	\$21,000
Wichita Dream Center	\$6,495	\$0
YMCA	\$104,253	\$104,000
The Mirror	NA	\$0
Youth Educational Empowerment Program	NA	\$0
TOTAL	\$174,220	\$125,000

Summer Youth Employment: \$96,650

The Summer Youth Employment program will be administered by the Housing and Community Services Department and will focus on education and job placements for youth ages 14-15 who live in Public Housing units or whose families receive rental assistance through the Section 8 Housing Choice Voucher program. This new model offers several advantages including a streamlined eligibility determination process because all of the youth are income-qualified as members of households living in HUD-funded housing programs. As of mid-December, 2011, there were 483 youth in the target population. Internal administration of the program will also have minimal program overhead (one part-time staff person will be hired), and will provide opportunities to make modifications as needed during the summer.

This model is being piloted in 2012 and will be evaluated at the end of the summer as to whether it should be continued and as to the best service delivery model.

Program Administration: \$482,438

Purpose: HUD allows up to 20% of the entitlement grant to be used for Program Administration, which includes reasonable costs associated with general management, oversight, coordination, monitoring and evaluation.

Category	2011-2012 Allocation	2012-2013 Allocation
Indirect Costs	\$118,660	\$97,438
Program Management	\$322,820	\$355,000
Fair Housing Initiatives	\$5,000	\$5,000
Mandated Consolidated Plan Activities	\$25,000	\$25,000
TOTAL	\$471,480	\$482,438

HOME Investment Partnerships Program

HUD requires that a minimum of 15% of the HOME allocation be designated for Community Housing Development Organizations (CHDOs). The 2012-2013 allocation provides 23.5% for this purpose.

Agency	2011-12 Allocation	2012-13 Allocation
Mennonite Housing Services	\$176,144	\$149,270
Power CDC	\$162,905	\$130,730
		\$8,461**
TOTAL	\$339,049*	\$288,461

*The 2011-2012 allocation included \$39,049 from prior year unexpended funds.

**After the allocation recommendations were made, HUD provided an update to the 2012-2013 allocation which increased it slightly. Staff and the GRC recommend that the increase be designated to offset the costs for GRC-recommended universal design features in homes constructed by the CHDOs.

The 2012-2013 recommendation will be sufficient for each CHDO to develop four houses. The difference in cost/house is due to the cost of land. Power CDC is developing houses in Millair Creek on land which the City donated; Mennonite has to acquire land to build. The recommended amounts include contingency for unforeseen expenses, in addition to the universal design funding referenced above.

Emergency Solutions Grant (ESG) Funds

The ESG program prioritizes permanent housing solutions for the homeless or for persons about to be homeless, with a reduced focus on emergency shelter and street outreach. Expenditures for shelter and outreach activities are capped at 60% of the annual allocation. Based on these requirements, staff developed a budget with allocations by categories. These are consistent with the Substantial Amendment which is being submitted to HUD for 2011-2012 ESG funding. If approved, staff will issue Requests for Proposals to meet the new criteria for \$223,388 available for the 2012-2013 ESG program.

The attached spreadsheet allocates specific funding amounts to Rapid Re-Housing and Homelessness Prevention. These recommendations are based on the actual funding experience for the American Recovery and Reinvestment Act (ARRA)-funded Homelessness Prevention and Rapid Re-Housing program. Should the needs shift during the 2012 year, City staff will make appropriate adjustments between the two categories.

Category	2011-2012	2011-2012(R)*	2012-2013
Emergency Shelter and Outreach	\$98,877	\$119,003	\$134,033**
Homeless Management Information System	0	\$635	\$1,500
Rapid Re-Housing and Homelessness Prevention	\$20,000	\$61,000	\$71,101
Administration	\$6,105	\$14,646	\$16,754

*The increase in 2011-2012 is due to a supplemental allocation of ESG funds.

**The GRC recommends that \$26,000 from this amount be allocated to Catholic Charities (\$15,125) and the YWCA (\$10,875) to replace reductions in CDBG Public Services allocations. The additional funds

will return them to 2011 funding levels.

Financial Considerations: HOME funds require a 25% non-federal match, which the Housing and Community Services meets through creative partnerships with community agencies and therefore General Fund match support has not been required.

Goal Impact: The HUD Consolidated Plan Process supports the Dynamic Core Area and Vibrant Neighborhoods, Economic Vitality and Affordable Living and Quality of Life goals.

Legal Considerations: The Law Department has confirmed that all proposed Council actions and program activities are consistent with federal regulations and requirements established by the U.S. Department of Housing and Urban Development.

Recommendations/Actions: It is recommended that the City Council close the public hearing and authorize submission of the 2012-2013 Fourth Program Year Action Plan Community Development Block Grant, HOME Investment Partnerships, and Emergency Solutions Grant Funds to the U.S. Department of Housing and Urban Development (HUD), and authorize the release of Requests for Proposals, necessary signatures, agreements and contracts.

Attachments:

2012-13 Fourth Program Year Allocation Spreadsheet
Action Plan Narrative
SF 424 and Certifications

2012-2013 RECOMMENDED CONSOLIDATED PLAN ALLOCATION May 1, 2012									
CDBG - CAPITAL									
	COMMUNITY DEVELOPMENT BLOCK GRANT Capital Projects	2010-2011 COUNCIL ALLOCATIONS	2011-2012 REVISED COUNCIL ALLOCATION	2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION			
	Sidewalk Repair	\$186,519	\$0	\$0	\$0	\$0			
	Street or Sidewalk Repair			\$75,000	\$75,000				
	Total - Capital Projects	\$186,519	\$0	\$75,000	\$75,000				
CDBG - HOUSING									
	COMMUNITY DEVELOPMENT BLOCK GRANT Housing Projects	2010-2011 COUNCIL ALLOCATIONS	2011-2012 REVISED COUNCIL ALLOCATION	2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION			
	Office of Central Inspection	\$171,000	\$150,000	\$100,000	\$100,000	\$0			
	Demolition and Clearance of Dangerous and Unsafe Buildings								
	Neighborhood Clean-ups	\$50,000	\$50,000	\$50,000	\$50,000	\$0			
	Housing and Community Services								
	- NIS Administration Total Annual Allocation, which is responsible for: CDBG-funded home repairs \$664,467, HOME Deferred home repairs \$35,000, Revolving Loan Program, Historic Revolving, Historic Deferred, Home Improvement Loan Program, and Inspection of all HOME-funded homebuyer properties	\$482,173	\$425,908	\$366,313	\$369,091	\$0			
	Amount from Annual Allocation		\$346,908						
	Amount from Prior Year Unallocated		\$79,000						
	- Home Repair	\$664,467	\$664,467	\$549,000	\$546,222	\$0			
	- Rental Housing Loan Program	\$0	\$0	\$0	\$0	\$0			
	Total - Housing Projects	\$1,367,640	\$1,290,375	\$1,065,313	\$1,065,313	\$0			
CDBG - NEIGHBORHOOD INITIATIVES									
	COMMUNITY DEVELOPMENT BLOCK GRANT Neighborhood Stabilization	2010-2011 COUNCIL ALLOCATIONS	2011-2012 REVISED COUNCIL ALLOCATION	2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION			
	Funds Available for Reallocation	\$0	\$321,000	\$0	\$0	\$0			
	Total - Neighborhood Initiatives	\$0	\$321,000	\$0	\$0	\$0			
	*This amount from prior year unallocated funds								

2012-2013 RECOMMENDED CONSOLIDATED PLAN ALLOCATION May 1, 2012									
CDBG - PUBLIC SERVICES									
	COMMUNITY DEVELOPMENT BLOCK GRANT Public Services - CAP is \$1,163,310	2010-2011 COUNCIL ALLOCATION	2011-2012 COUNCIL ALLOCATION		2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION		
	City Manager's Office Total Allocation	\$343,059	\$333,132	*	\$330,000	\$331,757	\$0		
	- Neighborhood Assistance Program								
	Amount from Annual Allocation		\$305,000		\$330,000	\$331,757			
	Amount from Prior Year Unallocated		\$28,132		\$0	\$0			
	Neighborhood Services Supervisor		\$28,132		\$0	\$0	\$0		
	Atwater		\$71,837		\$0	\$0	\$0		
	Colvin		\$82,488		\$0	\$0	\$0		
	Evergreen		\$78,071		\$0	\$0	\$0		
	Stanley		\$72,604		\$0	\$0	\$0		
	Housing and Community Services	\$63,605	\$50,000		\$67,000	\$68,593	\$0		
	- Housing First Project Coordinator								
	- Job Training				\$50,000	\$50,000			
RFP	Women's Services	\$269,033	\$275,000		\$275,000	\$275,000	\$0		
	- Catholic Charities, Inc. - Harbor House	\$123,321	\$125,125		\$0	\$110,000	\$0		
	- StepStone, Inc. Counseling and Support Groups	\$0	\$0		\$0	\$26,000			
	- YWCA of Wichita - Women's Crisis Center/Safehouse	\$145,712	\$149,875		\$0	\$139,000	\$0		
RFP	Youth Crime Prevention and Enrichment	\$100,000	\$174,220		\$125,000	\$125,000	\$0		
	-YMCA - Middle School After School	\$92,000	\$104,253		\$0	\$104,000	\$0		
	- BBBS Leaders, Achievers, and Winners (LAW) Camp	\$8,000	\$0		\$0	\$0	\$0		
	- Boys & Girls Clubs	\$0	\$25,000		\$0	\$0	\$0		
	- Hope Street	\$0	\$0		\$0	\$0	\$0		
	- Rainbows United	\$0	\$38,472		\$0	\$21,000	\$0		
	- Urban League	\$0	\$0		\$0	\$0	\$0		
	- Wichita Dream Center	\$0	\$6,495		\$0	\$0	\$0		
	Summer Youth Employment	\$267,186	\$199,364	***	\$100,000	\$96,650	\$0		
	Amount from Annual Allocation	\$213,186	\$100,000		\$0	\$96,650			
	Amount from Prior Year Unallocated	\$54,000	\$99,364		\$0	\$0			
	- Saint Mark United Methodist - Life in Action	\$104,000	\$0		\$0	\$0	\$0		
	- YMCA - Job Prep	\$163,186	\$170,000		\$0	\$0	\$0		
	Total - Public Services	\$1,042,883	\$1,031,716	***	\$947,000	\$947,000	\$0		
	* This amount includes \$28,132 from prior year unallocated funds								
	** This amount includes \$54,000 from prior year unallocated funds								
	*** This amount includes \$99,364 from prior year unallocated funds								
	***This amount includes a total of \$127,496 from prior year unallocated funds								
CDBG - PROGRAM ADMINISTRATION									
	COMMUNITY DEVELOPMENT BLOCK GRANT Program Administration - CAP is \$513,950	2010-2011 COUNCIL ALLOCATION	2011-2012 REVISED COUNCIL ALLOCATION		2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION		
	Housing and Community Services	\$418,966	\$446,480		\$458,645	\$452,438			
	- CDBG Indirect Costs	\$57,749	\$118,660		\$77,386	\$97,438	\$0		
	- CDBG Program Management Total Allocation	\$351,217	\$322,820	*	\$376,259	\$355,000	\$0		
	Amount from Annual Allocation	\$351,217	\$315,360		\$376,259	\$355,000			
	Amount from Prior Year Unallocated	\$0	\$0		\$0	\$0			
	- Fair Housing Initiatives	\$10,000	\$5,000		\$5,000	\$5,000	\$0		
	Planning Department	\$122,871	\$25,000		\$25,000	\$25,000	\$0		
	- Historic Preservation Planning	\$97,161	0		0	0	0		
	- Mandated Consolidated Plan Activities	\$25,710	\$25,000		\$0	\$0	\$0		
	Total - Planning and Admin.	\$541,837	\$464,020	*	\$483,645	\$482,438	\$0		
	UNALLOCATED TOTAL	\$54,000	\$527,496		\$0				
	ANNUAL ALLOCATION - CDBG	\$3,084,879	\$2,579,615	**	\$2,570,958	\$2,569,751	\$0		
	GRAND TOTAL - CDBG	\$3,138,879	\$3,107,111	**	\$2,570,958	\$2,569,751	\$0		

2012-2013 RECOMMENDED CONSOLIDATED PLAN ALLOCATION May 1, 2012									
HOME PROJECTS									
	HOME INVESTMENT PARTNERSHIPS PROGRAM Projects Program Administration - CAP is \$122,345	2010-2011 COUNCIL ALLOCATION	2011-2012 COUNCIL ALLOCATION	2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION			
	Housing and Community Services								
	- HOME Investment Partnership Administration (Includes \$10,716 for City Indirect Costs)	\$182,679	\$160,522	\$121,404	\$122,345	\$0			
	- HOME Operating Funds for CHDO's	\$50,000	\$50,000	\$50,000	\$50,000	\$0			
	Operating Funds-Power CDC								
	Operating Funds-MHRS								
	- HOMEownership 80 Program	\$590,153	\$647,001	\$427,641	\$427,641	\$0			
	- Boarded-up House Program	\$293,927	\$200,000	\$100,000	\$100,000	\$0			
	- Housing Development Loan Program	\$400,000	\$247,706	\$235,000	\$235,000	\$0			
	- Deferred Loan Program	\$35,000	\$0	\$0	\$0	\$0			
	Total HOME Projects	\$1,551,759	\$1,305,229	\$934,045	\$934,986	\$0			
	HOME INVESTMENT PARTNERSHIPS PROGRAM CHDO Set Aside Projects	2010-2011 COUNCIL ALLOCATION	2011-2012 COUNCIL ALLOCATION	2012-13 RECOMMENDATION*	2012-13 REVISED RECOMMENDATION*	2012-13 COUNCIL ALLOCATION			
	CHDO Set Aside - Total Allocation	\$275,031	\$339,049	\$280,000	\$288,461	\$0			
	Amount from Annual Allocation	\$275,031	\$300,000						
	Amount from Prior Year Unallocated	\$0	\$39,049						
	Mennonite Housing Rehab Services (MHRS)								
	- Single Family Home Development	\$146,890	\$176,144	\$0	\$149,270	\$0			
	Power CDC	\$128,141	\$162,905	\$0	\$130,730	\$0			
	- Single Family Home Development								
	Universal Design	\$0	\$0	\$0	\$8,461				
	Total CHDO Set Aside Projects	\$275,031	\$339,049	\$280,000	\$288,461	\$0			
	Subtotal - HOME & CHDO Set Aside Projects	\$1,826,790							
	UNALLOCATED TOTAL	\$0	\$39,049	\$0	\$0	\$0			
	ANNUAL ALLOCATION - HOME	\$1,826,790	\$1,605,229	\$1,214,045	\$1,223,447				
	GRAND TOTAL - HOME	\$1,826,790	\$1,644,278	\$1,214,045	\$1,223,447				

[illegible]



"Creating Communities of Choice"

GENERAL

Executive Summary

This is the fourth year of the City of Wichita's 2009-2013 Consolidated Plan and program activities have been identified to address the needs identified in the Plan and to achieve the mission - to create communities of choice where:

- low to moderate income persons have safe, affordable housing;
- residents realize their full economic and personal potential; and
- neighborhoods are healthy, vibrant and provide quality goods and services.

The Wichita community will continue to face challenges in this fourth program year. In addition to the slow growth of the national and local economies, our community will lose a major employer in 2013. Over 2,000 jobs will be lost and it is anticipated that the people who will be newly unemployed will create a high demand on services which are currently not meeting existing needs. Any reductions in funding will have an even greater impact on services in our community.

Components of the Fourth Program Year Action Plan (2012-2013) will provide assistance to persons who are experiencing need for the first time as well as to those who have been without the necessary resources to realize the community's vision. All activities will meet HUD national objectives to benefit low and moderate income persons and prevention and/or elimination of slums and blight.

The City of Wichita's top two 2009-2013 Consolidated Plan priorities are housing and public services; these activities are high priority items in the 2012-2013 action plan as well. Safe, affordable housing will provide community stability so that the Public Services which are delivered will have a reasonable expectation of improved quality of life, leading to self-sufficiency for the recipients of Consolidated Plan-funded services.

Plan objectives and anticipated outcomes are detailed in the Housing, Homeless, Community Development and Non-Homeless Special Needs Housing sections of this Fourth Program Year Action Plan.

General Questions

Area Designations

The City has designated several geographic areas for investment of Consolidated Plan funding. They are reflected on the following map, and have been identified based on the income characteristics of the residents as well as the condition of the housing stock and community infrastructure. In general, the approved Fourth Program Year Action Plan will fund projects in the Neighborhood Revitalization Area (outlined in red on the map). However there are several programs which will be restricted to the Local Investment Areas only, to provide a greater visual impact.

A majority of the funds listed in the Fourth Program Year Action Plan for Community Development Block Grant and HOME Investment Partnerships allocations will be expended in these areas. Other sources which will be sought include Affordable Housing Funds and local matching grants.

Table 1
Demographics for the City and Neighborhood Revitalization/Local Investment Areas

	City of Wichita	City of Wichita (excluding NRAs)	Neighborhood Revitalization Areas
Population	332,693	247,251	74,786
White	237,405	196,220	34,273
Minority	95,290	51,033	40,513
Percent Minority	28.64%	20.64%	54.17%
Low/Mod	141,987	88,316	47,664
Low/Mod Universe	321,102	238,863	72,046
Low/Mod Percent	44.22%	39.97%	66.16%
Number of Households	135,047	101,437	28,987
Median Income	\$45,889	\$51,792	\$27,208
Average Per Capita Income	\$17,854	\$24,000	\$11,707
# of Persons Below Poverty	37,597	19,329	16,272
Poverty Universe	328,053	245,425	72,231
Percent Below Poverty	11.46%	7.88%	22.53%
Number Employed	160,244	124,433	30,779
Number Unemployed	9,048	5,393	3,296
Percent Unemployed	5.60%	4.15%	9.67%
Housing Units	147,560	109,026	33,354
Occupied	135,047	101,437	28,987
Vacant	12,513	7,589	4,369
Percent Vacant	8.48%	6.96%	13.10%
Owner Occupied	82,565	67,052	15,179
Renter Occupied	52,484	34,387	15,811
Percent Renter Occupied	35.57%	31.54%	47.40%
# housing units 1939 or earlier	18,333	7,265	9,803
% housing units 1939 or earlier	12.42%	6.66%	29.39%
Median Year Built	1955	1957	1948
Owner Occupied Value	\$85,632	\$100,146	\$40,264
Median Rent	\$552	\$578	\$469

Table 2
Demographics of Each Neighborhood Revitalization/Local Investment Areas

	Core Area*	Planeview	Hilltop
Population	68,733	4,261	1,792
White	31,912	1,249	1,112
Minority	36,822	3,011	680
Percent Minority	53.54%	70.66%	67.95%
Low/Mod	43,241	3,039	1,384
Low/Mod Universe	65,976	4,271	1,799
Low/Mod Percent	65.54%	71.15%	76.93%
Number of Households	26,925	1,289	773
Median Income	\$27,334	\$26,845	\$22,575
Average Per Capita Income	\$11,795	\$9,945	\$11,357
# of Persons Below Poverty	14,737	1,108	427
Poverty Universe	66,175	4,264	1,792
Percent Below Poverty	22.27%	25.98%	23.83%
Number Employed	28,473	1,559	747
Number Unemployed	3,040	169	87
Percent Unemployed	9.65%	9.78%	10.43%
Housing Units	30,807	1,613	934
Occupied	26,925	1,289	773
Vacant	3,883	325	161
Percent Vacant	12.60%	20.15%	17.24%
Owner Occupied	12,425	354	400
Renter Occupied	14,502	935	374
Percent Renter Occupied	47.07%	57.97%	40.04%
# housing units 1939 or earlier	9,468	268	67
% housing units 1939 or earlier	30.73%	16.62%	7.17%
Median Year Built	1948	1946	1947
Owner Occupied Value	\$41,441	\$26,775	\$72,001
Median Rent	\$473	\$392	\$443

Underserved Needs

The needs of the residents and property in the target areas are underserved primarily due to a lack of funds. To counter this condition the City invests CDBG and HOME dollars to a significant degree and encourages private development as well. However many of the neighborhood conditions have accumulated over time and it will take time to address them all.

Funds from the American Recovery and Reinvestment Act of 2009 were invested to address economic development and infrastructure needs in these areas in 2009, 2010 and 2011. Those funds were fully allocated during 2011 and remaining funds will be fully exhausted during the upcoming program year. Therefore, the primary source of funding will be entitlement funding which will be allocated as detailed in the following pages and in the spreadsheets at the end of this document.

A second strategy to address the underserved needs is to continue to provide incentives for private development in these areas. Incentives that are available in these areas include tax rebates, façade improvement funds, water/sewer tap and plant equity fee waivers, and permit fee waivers.

A third strategy will be to continue to seek partnerships with other government agencies, the private and non-profit sectors, faith-based programs, and the philanthropic community. This strategy has been beneficial on a number of projects and provides a great opportunity to leverage resources and avoid duplication.

Fourth Program Year Action Plan Local Resources

The Fourth Program Year (2012-2013) Action Plan utilizes the following funding levels:

CDBG Annual Allocation	\$2,569,751
HOME Investment Partnerships	\$1,223,447
Emergency Solutions Grant	\$223,388

These funds are proposed for project allocations as summarized below:

Community Development Block Grant

Housing	\$1,065,313
Public Services	\$947,000
Program Administration	\$482,438

HOME Investment Partnerships

Projects/Programs	\$812,641
Community Housing Development Organizations	\$288,461
Program Administration	\$122,345

Note: The City meet will meet its HOME program 25% match obligation through the value of waived permit fees and tax rebates; AHP funding which CHDOs pair with HOME-funded projects; and the present value of interest which Habitat for Humanity waives for its homebuyers on project receiving HOME down-payment and closing cost assistance.

Emergency Solutions Grant

Homeless Assistance	\$134,033
Rapid Re-Housing and Homelessness Prevention	\$71,101
HMIS	\$1,500
Administration	\$16,754

The Emergency Solutions Grant will be administered consistent with program regulations and guidance. The Continuum of Care will continue to be engaged in the process of fund distribution. Rapid Re-Housing and Homeless Prevention will be administered by the Housing and Community Services Department.

The HUD Office of Public and Indian Housing will fund the Wichita Housing Authority as follows:

Housing Authority

Public Housing	\$ 4,010,930
Capital Fund	\$ 1,477,900
Section 8 Housing Choice Voucher	\$14,048,143

American Recovery and Reinvestment Act of 2009

The City of Wichita received the following ARRA funds by formula. Funds have been fully allocated towards activities to improve the lives and neighborhoods of the City's most vulnerable populations:

- Public Housing Capital Fund: \$1,265,098
 - Funds were used for furnace and air conditioner upgrades in Public Housing properties, resulting in more efficient heating and air conditioning and lower utility bills.
- Community Development Block Grant-R: \$764,126
 - Funds were used for neighborhood façade upgrades for eight businesses and over 160,000 square feet of sidewalk improvements.
- Homelessness Prevention and Rapid Re-Housing Program: \$1,168,490
 - As of February 15, 2012, 337 households representing 837 people, received rent and utility assistance to end their homelessness by being housed or to avoid homelessness.

Managing the ProcessLead Agency

The Housing and Community Services Department is the lead agency for developing and administering the programs funded through the Consolidated Plan. The department's mission – to provide housing and related services to benefit the citizens and neighborhoods of Wichita – is consistent with the goals of the funds which are a part of the Plan. The department is supported by the administrative systems and organizational infrastructure of Wichita City government, which facilitates the approval and execution of contracts, processes payment requests and provides information technology support.

Process Steps

Housing and Community Services Department staff begins the Annual Program Year Action Plan process by preparing estimates of federal funding levels for the coming year. Once the estimates are developed, staff recommends funding levels for various program activities. For preparation of the 2012-2013 annual funding year staff took the additional step of securing public input into the community's priorities for the year by implementing a priority needs survey. The staff developed 2012-2013 priority recommendations for City Council approval based on citizen feedback, survey data, consistency with the Consolidated Plan, and in accordance with HUD's national objectives.

The process calls for the package to be presented to the City Council for review and comment – and to the public during the City Council meeting. Once the City Council approves the estimates and recommendations, Requests for Proposals are issued for CDBG projects and invitations to submit applications are issued for HOME funded activities. Responses are reviewed by staff and by a citizen committee, and are adjusted once the final allocations are made available.

Enhanced Coordination

The City's revised New Communities Initiative is expected to become operational in mid to late 2012. It will involve a collaboration of public and private agencies, as well as local and state government, who will all be focused on improving the physical and social conditions of select small areas in four Council neighborhoods. It will be led by a policy group of local leaders representing a broad spectrum of government, private and non-profit entities.

Housing and Community Services Department staff participates on various community task forces and in discussions and decision-making sessions with each. They include: PACES Leadership Committee (job training and placement); Basic Needs Community Impact Council; Continuum of Care Coordinating Committee; Homeless Services Provider Network; Tenant Advisory Council (Public Housing), and Homeless Youth Task Force, to name a few. The department's representation on these committees provides a link between the service providers and the Consolidated Plan initiatives.

Citizen Participation

Citizens were asked to comment on priorities for the 2012-2013 Fourth Program Year Action Plan, through presentations at District Advisory Board meetings in December, 2011. Following those presentations citizens were encouraged to complete a survey which asked them to rank their priorities for 2012-2013 programming.

Citizen feedback regarding priorities was incorporated into the staff presentation to the Wichita City Council and included new areas of focus in crime prevention and stronger emphasis on youth employment. The presentation took the form of a public hearing and was made on January 10, 2012. Following that presentation requests for proposals and applications were distributed, inviting community agencies to propose or apply for funds to deliver services. A committee of citizens appointed by the City Council, the Grants Review Committee (GRC), reviewed the applications and proposals and conducted a public hearing on February 16, 2012 to review proposals and receive citizen comments. They prepared recommendations which were presented in a second City Council meeting on March 20, 2012.

Following that meeting, a formal 30 day public comment period was announced and citizens were invited to comment on the plan from March 21, 2012 through April 19, 2012. (See attached affidavits of publication).

Comments were received relative to internal administration of the summer youth employment program. The comments were from a previously funded agency, for consideration of continued external administration of this program.

Institutional Structure

The City of Wichita has a history of successful administration of federal programs for housing, community planning and development, and the existing institutional structure will continue for the 2012-2013 program year. The Housing and Community Services Department is responsible for administering HUD funding through the Consolidated Plan (CDBG, HOME and ESG), as well as operation of the Wichita Housing Authority which is funded through the Office of Public and Indian Housing. As the administering department, the Housing and Community Services Department utilizes the services of the City Finance, Administration and Law Departments to manage grant agreement documents. In addition, the City Manager's Office and Public Works Department also have a role in implementing many of the programs which are funded.

The City also contracts with non-profit and for-profit housing developers and service providers, to implement components of the action plans. Fund availability is announced through public City Council hearings and in the media. Service providers are identified through a competitive process – either through a Request for Proposals or Invitation to Apply. Housing developers which have been funded include two certified Community Housing Development Organizations (CHDOs): Mennonite Housing and Rehabilitation Services and Power CDC. These agencies apply for and receive CHDO operating and development funds through the HOME program. For-profit developers may also apply for housing development funding.

A Council-appointed citizens committee, the Grants Review Committee, reviews all CDBG proposals and HOME applications and makes funding recommendations to the City Manager. The City Manager's recommendations are forwarded to the City Council for final approval.

Monitoring

Community Development Block Grant funded programs are monitored in several ways. The Housing and Community Services Department's Community Investment staff carefully review external audit documents submitted by subrecipients in the initial application for funding and make note of any irregularities which must be addressed prior to entering into a funding agreement. City contracts with subrecipients for annual funding include performance measures which require submission of monthly reports on progress toward meeting those goals. City staff reviews all performance and expenditure reports monthly, and a desk audit is conducted following the second quarter for each subrecipient. The desk audit includes review of program accomplishments, expenditures, and support documentation. Comprehensive on-site monitoring takes place in the following situations, at a minimum:

- Within the first year for every new subrecipient.
- During a year when any subrecipient fails to take recommended corrective action on two consecutive desk audits.
- During the program year for all projects which are at high risk as indicated by risk assessment score.

A written summary is provided to the subrecipients following each desk or on-site monitoring audit performed during the year. The summary includes progress towards accomplishment of performance measures, timeliness of expenditures, timeliness of reporting, and any other concerns identified, as well as information concerning availability of technical support or assistance.

The HOME Investment Partnerships program monitoring plan includes annual on-site monitoring of all HOME-funded rental projects during the applicable affordability periods. Homeownership projects receiving HOME program assistance for purchase and/or rehabilitation/construction are subject to mortgage liens which are filed with the Register of Deeds of Sedgwick County to guarantee the required affordability period. And finally, during the development process, HOME staff monitors construction progress in order to ensure the validity of reimbursement requests submitted for payment. Such payment requests are also reviewed to confirm that specific costs are eligible for HOME funding. Construction projects are also monitored by the City's Office of Central Inspection to ensure compliance with applicable building codes.

The City of Wichita is committed to ensuring that funds are utilized to meet HUD national objectives and local goals and mission. This monitoring plan will provide that assurance for the fourth program year.

Lead-Based Paint

The City of Wichita will continue to ensure that recipients of its services have access to housing which is lead safe. It will do so in the following ways.

Home repair projects will either have risk assessments performed prior to construction, or all work contracts will "presume lead." Projects costing between \$5,000 and \$25,000 are subject to homeowner notification, renovation by trained and qualified workers, temporary relocation of household members and clearance testing. Program staff are licensed Risk Assessors and receive annual training and updates to their certifications. Regardless of the amount of work performed, all homeowners receive the "Protect Your Family from Lead in Your Home" and "Renovate Right" booklets.

When homes are purchased with assistance from HOME funds, realtors are required to provide buyers with a copy of the standard lead-based paint disclosure form and booklet when the purchase contract is signed. Copies are maintained in the City's files. The City also developed a Contract Addendum that is used in connection with the City's down payment and closing cost assistance program. The Addendum advises buyers and sellers that the City's funds are subject to the lead paint regulations, that the City presumes lead-based paint is present in structures built before 1978, and that such structures will be inspected by the City for signs of deteriorated paint. The seller will be required to correct deficiencies and to obtain the required clearance inspections prior to closing. Clearance statements and Lead Presumption notification forms are provided to the buyers at closing. The City will not provide funding for minor rehabilitation in connection with this program.

Housing Authority-owned properties are lead-safe and therefore tenants placed in Public Housing are assured of a lead-safe living environment. Section 8 Housing Choice Voucher holders are also assured of a lead safe environment through the required property inspection process. Prior to issuance of a payment agreement with a landlord, properties are inspected and must meet Housing Quality Standards. Properties built before 1978 with chipped or peeling paint will not pass Housing Quality Standards inspections until the property is free of lead hazards. As an additional precaution, the Section 8 Housing Choice Voucher program also cross references its units with units where children have been identified as having elevated blood levels (EBL) by the Kansas Department of Health and Environment. To date, no subsidized addresses have matched the state's addresses.

The City of Wichita was included in a successful grant application which was submitted by the Kansas Department of Health and Environment (KDHE) to enhance lead elimination activities in Wichita homes. Grant funds from KDHE will be available to CDBG-funded home repairs, specifically related to lead based

paint. That program began in 2011 and will continue in 2012. It represents a partnership between the City and KDHE in which information on City-funded repair projects below the lead-paint threshold, is shared with local KDHE staff. They evaluate the need and extent of need, for lead abatement services to complement the City's authorized work. As a result, homeowners receive assistance beyond what would have been available.

HOUSING

Specific Housing Objectives

Following are the priorities and specific objectives that the City of Wichita hopes to achieve in the Fourth Program Year.

- *Promote Homeownership* by a) increasing the number of first time homebuyers, b) increasing the housing stock available to first time homebuyers, c) maintain safe housing for existing homeowners through home repair programs.
- *Assist low to moderate income renters* by a) maintaining an occupancy level of 98 percent or higher in our public housing units, b) maintaining a 98 percent or higher lease-up rate in our Section 8 program, c) depending on available funding, provide resources to repair property for rent to low to moderate income families and individuals, d) encourage and participate in the development of new affordable rental units.
- *Assist the homeless population* by a) providing funds to support emergency shelter services, b) depending on funding availability provide funds to support transitional housing programs, c) provide funds to prevent homelessness, and d) provide affordable permanent housing.
- *Enhance the quality of life for low to moderate income homebuyers, homeowners, and renters* by a) providing information about maintaining their housing, b) provide information about how to purchase a home, c) provide information and resources about modifying homes to accommodate special needs.
- *Enhance low to moderate income neighborhoods* by a) funding blight elimination programs, and b) funding programs to acquire and rehabilitate blighted properties, c) funding neighborhood infrastructure projects.

The following table details objectives, anticipated resources, and the estimated number of units to be produced or families to be assisted during 2012-2013.

Needs of Public Housing

Since the Wichita Housing Authority is a part of the Housing and Community Services Department, department staff is ideally positioned to deliver comprehensive and coordinated services. In particular, the department encourages Public Housing tenants and Section 8 Housing Choice Voucher holders, to explore the possibility of homeownership with assistance from the HOME program.

Barriers to Affordable Housing

The City of Wichita does not have regulatory barriers to affordable housing however it is silent on policy measures which could enhance the availability of affordable housing. The City of Wichita waives building permit, water, and sewer tap fees in the Neighborhood Revitalization Area for new construction and provides partial tax rebates for a period of five years. These incentives are offered to encourage development within the central city and are most often used by property owners who are improving residential property.

The greatest barrier associated with housing development and support lies in the marketing of the available programs and incentives. The City continues to identify ways to increase its marketing efforts, primarily through the use of the City's public television channel – City 7.

Specific Housing Objectives: 2012-2013

Objective	Resources	Estimate Funding Amt		Units
Promote homeownership				
A. Increase number of first time home buyers	HOME, local lender pool, local banks and financial institutions	HOME Admin HOME 80	\$122,345 \$427,641	27 1 st time homebuyers
B. Increase number of affordable single family homes for purchase	HOME and local banks and financial institutions	CHDO SF DEV Hsg Dev Loan	\$280,000 \$235,000	15 homes
C. Maintain safe housing for existing homeowners through home repair programs	CDBG, HOME, Affordable Housing Program, non-profits, local builders' associations, local job training programs	Home Repair	\$546,222	275 homes repaired
Assist low to moderate income renters				
A. Maximize Public Housing inventory by maintaining 98+% occupancy	Office of Public and Indian Housing	Rent Sub Cap Fund	\$4,010,930 \$1,477,900	566 households
B. Maximize Housing Choice Voucher program by maintaining 98+% utilization	Office of Public and Indian Housing, Supportive Housing Program	PIH HCV HAP	\$14,048,144	2,500 households
C. Provide funds for repairs to property for rent to low to moderate income renters	Local tax incentive programs	None Budgeted		NA
D. Encourage and participate in development of new affordable rental units	Federal Housing Tax Credit program, local tax incentive programs, City Council endorsement	None Budgeted		NA
Assist the homeless population				
A. Provide funds to support emergency services	CDBG ESG	Women's Services Homeless Assistance	\$275,000 \$134,033	300 persons
B. Provide funds to support transitional housing programs	ESG	None Budgeted		NA
C. Provide funds to prevent homelessness and provide Rapid Rehousing	ESG	\$71,101		NA

Objective	Resources	Estimate Funding Amt	Units
D. Provide affordable permanent housing	<ul style="list-style-type: none"> Office of Public and Indian Housing HPRP Community Nonprofits City of Wichita general fund Sedgwick County general fund 	VASH \$ 341,820 HPRP \$1,110,065 Housing First \$191,368 Housing First \$191,368	135 voucher units 239 persons 64 persons (City & County)
E. Administer Homeless Assistance	ESG CDBG	ESG \$16,764 Housing First \$68,593	NA
Enhance the quality of life for low to moderate income homebuyers, homeowners and renters			
A. Provide information as to how to maintain their housing	CDBG, HOME, Office of Public and Indian Housing, community counseling agencies	In-Kind	NA
B. Provide information regarding how to purchase a home	HOME, community counseling agencies, CHDOs	CHDO Operating \$50,000	50 persons
C. Provide information and resources to address the need to modify homes to accommodate special needs	CDBG	NIS Admin \$369,091	NA
Enhance low to moderate income neighborhoods			
A. Fund blight elimination programs	CDBG, HOME, CSBG	Demolition \$100,000 N'hood Clean-ups \$50,000	15 projects 14 areas
B. Fund programs to acquire blighted properties and restore them	HOME	Boarded up Home program \$100,000	2 homes
C. Fund neighborhood Infrastructure Projects (Sidewalks)	CDBG	CDBG \$75,000	

HOME Investment Partnerships Program

The City of Wichita will use HOME funds consistent with 24 CFR 92.205 (b), and does not plan to use HOME funds to refinance existing debt secured by multifamily housing.

HOME funding will be utilized to provide down payment and closing costs assistance loans for owner-occupant homebuyers with household incomes not exceeding 80 percent of the median income level for the Wichita MSA. The City's homeownership assistance program is known as HOMEownership 80.

The City will utilize the "recapture" option with its homebuyer assistance program, as described in 24 CFR 92.254, of the HOME regulation. Financial assistance available under the City's HOMEownership 80 program is provided in the form of loans secured by a second and/or third mortgage with an acceleration clause to call the entire note due and payable in the event of subsequent sale or when the property ceases to be owner-occupied. A statement of owner-occupancy is an element of the second mortgage. In the event the re-sale price of the HOME-assisted property is insufficient to pay for closing costs, sales expenses and outstanding mortgage balances, the HOME subsidy loan may be forgiven in whole or in part, provided the seller (original program participant) does not receive any proceeds from the sale of the home at the time of closing. This provision also applies to foreclosure sales.

The City of Wichita believes affordability is best achieved by making HOME subsidies available through zero-interest deferred payment loans, which have no monthly payment obligation. By making these loans due and payable upon re-sale, the HOME funding can be "recycled" in order to carry out additional affordable housing projects. All loan repayments are considered to be Program Income, and must be used in connection with HOME-eligible projects. HOMEownership 80 loan funds repaid during the affordability period are considered to be "recaptured" funds.

The City's loan documents include a provision for partial loan forgiveness, in connection with its HOMEownership 80 program. Upon expiration of the applicable affordability period, the City will forgive 50 percent of the loan provided for down payment and closing costs.

The City will provide a minimum of 15% of its HOME allocation to Community Housing Development Organizations (CHDOs) in order to support the development of affordable housing. Mennonite Housing Rehabilitation Services and POWER Community Development Corporation will receive funding, under the CHDO set-aside, sufficient for each of them to develop four new homes which will be sold to income-eligible homebuyers. The City has restricted the development of such housing to Redevelopment Incentive Areas and Local Investment Areas, in order to complement other public and private efforts to build up the City's core areas. The City will also provide housing development funding to CHDOs through its Boarded-up HOME Program, and also through its Housing Development Loan Program (HDLP). HDLP funding will also be made available to other non-profit housing development organizations and for-profit developers.

The City of Wichita has a documented and extensive program for outreach to minority and women-owned businesses for the general purpose of government. Procurement processes for the HOME program are governed by these policies which can be found in the attached manual. To the extent applicable, similar language/expectations will be included in CHDO contract documents.

HOMELESS

Sources of Funds

During the 2012-2013 year, the City of Wichita expects to receive \$223,288 in Emergency Solutions Grant (ESG) funds to assist the homeless population by supporting essential services, maintenance and operations, as well as rapid re-housing and homeless prevention. The Fourth Program Year Action Plan will establish a new program model which is different from the prior Emergency Shelter Grant program. The City will administer the rapid re-housing and homeless prevention components of the new ESG funds, utilizing a process similar to that which was used with the ARRA-funded Homeless Prevention and Rapid Re-Housing program. The homeless assistance and HMIS services will be delivered by contract with local service providers. A Request for Proposals will be issued following approval of this Action Plan and proposals will be evaluated by the local Continuum of Care. This process is detailed in the Substantial Amendment which was submitted to HUD in conjunction with the supplemental ESG allocation for FY 2011. Organizations which serve victims of domestic violence who receive support from the Community Development Block Grant (CDBG) program, Public Services category, will also be eligible to apply for ESG funding.

The City of Wichita and Sedgwick County have also committed general funds to pay for rent subsidies for chronically homeless persons participating in the Housing First program. In the Housing First program, chronically homeless persons are offered immediate permanent housing with the option of receiving supportive services. All participants agree to meet at least weekly with a case manager and to adhere to the lease requirements. City staff administers this program.

Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds are nearly fully expended however a small amount remains and will be used to assist eligible homeless or near-homeless persons in the community. The program has been very successful since inception and at the end of the second year of operations, had served nearly 500 families, representing over 1,300 persons.

Homelessness

The Fourth Program Year Action Plan will provide funding support to each phase of the continuum of services outlined in the 2009-2013 Consolidated Plan. Emergency shelter will be provided to homeless individuals and families with support from the ESG program. In addition, persons fleeing domestic violence environments will receive shelter and counseling through ESG and CDBG funds. There are no obstacles foreseen due to the fact that the homeless services provider network collaborates on a regular basis to avoid duplication and enhance seamless service delivery.

A new population of homeless persons is an area of focus for the Wichita community – homeless young adults. Some of this population have aged out of foster care and have rejected the discharge planning available through those programs. Others have been kicked out of their homes. A disturbing number of these young persons have children of their own. Two local task forces are reviewing options for providing safe, healthy alternatives for this population. One of the task forces is led by the Wichita Mayor. Both groups have representatives from government, the faith community, current service providers, and citizens not affiliated with any agency or program.

Chronic Homelessness

The Task Force on Ending Chronic Homelessness presented a five-point plan to the Wichita City Council and the Sedgwick County Commission in March, 2008. The five points of the plan are: 1) Establish a one-stop resource and referral center; 2) Implement a Housing First program; 3) Identify strategies to meet unfilled needs for emergency shelter for the next 2-3 years; 4) Identify sustainable funding sources; and 5) Create an oversight committee to ensure implementation of the other four strategies. The oversight committee is in place and the Housing First program has been implemented. The Resource and Referral Center opened in February, 2012 and is experiencing a high volume of participation from the homeless community.

Homelessness Prevention

Homeless prevention will be addressed through the ESG program, as well as the funds remaining from the HPRP.

Discharge Policy

Foster Care Discharge Protocol

Kansas Department of Social and Rehabilitative Services, which includes Children and Family Services, has adopted a policy that would prevent discharging homeless individuals from publicly funded institutions or systems of care into homelessness or into HUD funded programs for the homeless. The policy was approved December 2006. The policy states that staff will ensure to the maximum extent practical and when appropriate that all individuals who are discharged from State funded institutions or systems of care have housing options available in order to prevent being discharged into homelessness. Youth who leave the foster care system because they have attained 18 years of age are eligible to participate in Independent Living Services through the Chafee Foster Care Independence Program. This is a voluntary program and youth may choose not to participate. Prior to discharge/release at 18 years of age, youth receive information concerning transitional planning which includes information on housing, employment and educational services available to them through the Independent Living Program. Transition plans do not include direct discharge to homeless shelters.

SRS-Children and Family Services has six Regional Independent Living Coordinators who help children in Foster Care transition into adulthood.

Health Care Discharge Protocol

The Kansas Department on Aging follows state and federal regulations in relation to discharge planning however neither the state nor federal regulations address assurance that residents will be discharged into housing. The Kansas Department on Aging has agreed to be a member of the Kansas Interagency Council on Homelessness. The same applies to general health care facilities. They are bound by state and federal regulations but assurance that housing will be available is not in the regulations. The Kansas Hospital Association will be asked to join the Kansas Interagency Council on Homelessness.

Mental Health Discharge Protocol

Kansas Department of Social and Rehabilitative Services (SRS), which includes Mental Health Services, has adopted a formal policy that would prevent discharging homeless individuals from publicly funded institutions or systems of care into homelessness or into HUD funded programs for the homeless. The policy was approved December 2006. The policy states that staff will ensure to the maximum extent practical and when appropriate that all individuals who are discharged from State funded institutions or systems of care have housing options available in order to prevent being discharged into homelessness. SRS-MH is currently developing a strategic plan to standardize the discharge planning protocol among all

three State Mental Health Hospitals. A brief summary of the charge to the planning committee is: 1. Develop Discharge Protocol; a. develop a hospital discharge protocol that addresses continuing care needs; b. the protocol should address the needs of special populations and co-occurring issues (Mental Retardation/Substance Abuse, offenders, behavioral issues aging, homeless); c. protocol should describe how sharing and improving access to records will occur across systems. Agencies involved are: Social and Rehabilitative Service-Disability and Behavioral Health Services, Association of Community Mental Health Centers, Department of Education, Larned State Hospital, Mercy Regional Hospital, Area Mental Health Center, Prairie View Mental Health Center, Kaw Valley Center, Kansas NAMI, Osawatomie State Hospital, Topeka Independent Living Center, Havilland Nursing Facility for Mental Health, Wichita State University, Value Options, consumers of mental health services and their family members

Corrections Discharge Protocol

The Kansas Department of Corrections has a formal policy regarding release and discharge planning, with planning for all offenders beginning at 16 months pre-release, or upon admission if their length of incarceration is less than 16 months. Offenders are assessed for risk and need, and plans are developed for their return to the community. Specialized reentry and discharge planning staff are in all facilities working with offenders. Housing specialists in Topeka, Kansas City and Wichita support release and discharge planners in their effort to find suitable housing for offenders. There are still many barriers, but the issue is receiving a lot of attention by case managers and specialists in the corrections system.

COMMUNITY DEVELOPMENT

The City of Wichita's non-housing priority community development needs have been identified in various neighborhood plans. Specifically they include public facilities such as improved sidewalks, street improvements and street layout. These are most frequently mentioned in each of the five plans for the target areas and are therefore rated at the highest priority level. In addition the neighborhood plans include the need for new or improved neighborhood parks, open spaces and pedestrian walkways.

The plans also stress the need for community gathering places so that residents can be informed and have a voice in their future. The Neighborhood City Halls currently provide that outlet and the Community Development Block Grant-funded positions at those facilities promote the use of the Neighborhood City Halls for the benefit of the surrounding neighborhoods. In the Fourth Program Year Action Plan, the Neighborhood Assistant positions will be funded to continue to provide this service.

Public Services initiatives address priority needs often mentioned in the neighborhood plans as well as in responses to the priority needs survey which the City conducted in preparation of the 2009-2013 Consolidated Plan. Youth programs are specifically mentioned and the Fourth Program Year Action Plan will fund afterschool recreation and enrichment and summer youth employment programs. In addition CDBG funds will be allocated to support a special employment program for youth who are between 15-17 and are in State custody.

Code enforcement is being supported in the non-housing community development needs in the form of funds to demolish blighted properties (CDBG) and through HOME funds which will be available to acquire and rehabilitate boarded up homes. Both of these activities have consistently been listed as high priority needs as expressed by residents who live in areas where such blighted conditions exist.

Specific Objectives

Following is a summary of specific objectives listed in the 2009-2013 Consolidated Plan, Housing and Community Development Activities chart. These activities continue to guide funding decisions.

Public Facilities and Improvements

- 03: develop or improve 4 parks and/or neighborhood centers
- 03A: develop one senior center following consultant needs assessment (Long Term)
- 03C: develop resource and referral center for the homeless
- 03E: develop or expand neighborhood meeting space in at least one target area (Long Term)
- 03F: develop new parks in target areas (Long Term)
- 03I: create flood drain improvements in target area (Long Term)
- 03J: create water and sewer improvements (Long Term)
- 03K: initiate street improvements (Long Term)
- 03L: complete 5 sidewalk projects

Clearance and Demolition

- 04: Fund 39 projects

Public Services

- 05: fund 8 public services projects
- 05A: provide 10 units of services for seniors
- 05D: fund 5 youth projects
- 05E: develop or improve 4 transportation projects (Long Term)
- 05F: fund substance abuse treatment services (Long Term)
- 05G: fund 2 projects that serve victims of domestic violence
- 05H: fund or support one employment training program
- 05I: fund or support one crime awareness program
- 05J: fund or support one fair housing activity
- 05K: fund one project to increase access to health services (Long Term)
- 05Q: provide support for one subsistence payment program

Other

- 12: provide funds or support for the construction of 21 single family homes (HOME)
- 13: provide funds or support for direct homeownership assistance
- 14A: provide funds for rehab of 240 single unit residential projects (CDBG)
- 14B: provide funds for rehab of multi-family residential projects (Long Term)
- 14F: provide funds for 40 improvements to single family properties which increase energy efficiency
- 14G: provide funds to acquire 20 properties for rehabilitation
- 14H: provide funds for administration for rehab projects
- 14I: provide funds for 6 projects which address lead paint testing and/or abatement
- 16A: provide funds for 4 residential historic preservation projects
- 16B: provide funds for one non-residential historic preservation project
- 17A: fund 2 land acquisition projects (Long Term)
- 19E: utilize CDBG funds to rehab 20 foreclosed properties

Planning

- 21A: fund 6 positions to administer Consolidated Plan programs
- 21B: provide funds to cover 5 units of indirect costs to support Consolidated Plan programs

21D: fund 1 fair housing activity

HOPWA

The City of Wichita does not administer HOPWA funds.

HOME

Produce 21 new owner units

Provide homeownership assistance to 39 homebuyers

Antipoverty Strategy

The City of Wichita will continue to support the programs which are the primary focus of antipoverty strategies. Although not funded through the Consolidated Plan, the City's Career Development Office receives Community Services Block Grant funds. These and other financial resources are used to assist persons referred by the State Department of Social and Rehabilitation Services or those who self-refer, to obtain or improve their employment status. This office also helps connect participants with support networks to prepare them for self-sufficiency. During a City reorganization in April, 2010, the Career Development Office was aligned within the Housing and Community Services Department.

A special grant was received from the AT&T Foundation to provide employment services to persons who are housed through the Housing First program. This is a population which was formerly chronically homeless but has become stabilized in housing through this program which is jointly funded by the City and County. The grant is providing them with educational tools and training in order to obtain and keep a job.

The Wichita Housing Authority will also continue to offer the Family Self-Sufficiency program which is designed to help Housing Choice Voucher holders establish and reach self-sufficiency goals. This program's goal is to maintain a minimum of 160 families in the program.

The City will refer clients to case managers who have received SSI/SSDI Outreach, Access and Recovery (SOAR) training so that they can receive assistance applying for Supplemental Security Income benefits.

NON-HOMELESS SPECIAL NEEDS HOUSING

The City of Wichita does not receive HOPWA funding as an entitlement grant. Thus, the needs of persons living with HIV/AIDS are addressed in the context of City programs which serve any special needs population.

In Wichita, the Sedgwick County Housing Department administers the Shelter Plus Care program and one of the active partners in that operation is Positive Directions, which is an AIDS Service organization. Positive Directions staff makes referrals to the Housing Department and when certificates are available, clients are housed with rent subsidies. Positive Directions provides case management support during the period the client is housed. This program will continue using federal funds made available through the Continuum of Care.

The Kansas Department of Health and Environment also contracts with local service providers for delivery of services to this population using HOPWA funds. The City of Wichita is confident in the ability

of these providers to work on behalf of their clients by locating suitable housing and providing appropriate supportive services.

Kansas Care Through Housing is the HOPWA- (Housing Opportunities for People With Aids)-funded program, which is sponsored by The University of Kansas School of Medicine-Wichita, Medical Practice Association (UKSM-W MPA). All guidelines established are in compliance with HUD and HOPWA. Assistance is provided regardless of race, religion, color, sex, sexual preference, disability, veteran's status, national origin or ancestry.

PROGRAM INCOME AND CARRYOVER FUNDS

Program income is anticipated from the CDBG and HOME programs, and will be allocated as follows.

CDBG – Revolving Loan Program

In 1976, the City established a CDBG-funded Deferred Loan program for major home repair, and receives an average of \$25,000 per year from loan repayments. Once payments reach an amount sufficient to fund additional projects, the funds are transferred into the existing loan program account. It is anticipated that funds will be transferred in the 2012 program year as available and to meet needs identified in the Consolidated Plan. The transfer of funds will require approval by the City Council, in a public meeting.

CDBG – All Other Income

For all other program income, funds will be directed to increase funding in existing programs related to home repair and neighborhood capital improvements; to fund neighborhood initiatives; and to assure continuation of certain public service activities.

HOME – Program Income

The HOME program anticipates receipt of approximately \$200,000 in program income during the 2010 program year. Funds will be allocated to existing CHDO set-aside, Housing Development Loan Program, and Boarded -Up Home program activities.

None of the preceding transactions will trigger a substantial amendment to the Consolidated Plan based on the amount of program income anticipated. It is understood that program income-funded activities will expend program income prior to drawing entitlement funds.

MAR 20 '12 AM 11:05

LEGAL PUBLICATION STATEMENT / INVOICE

THE WICHITA EAGLE

PO Box 820
Wichita, KS 67202

In Account With:

CITY OF WICHITA
HOUSING SERVICES DEPARTMENT
PUBLIC HOUSING DIVISION
332 N. RIVERVIEW
WICHITA, KS 67203

PUBLICATION AND DATES	CHARGES
-----------------------	---------

OCA 092193

COST: \$25.20

2012/2013 Hud One-Year Action Plan

65% CDBG 092193 - \$16.38

33% HOME 099139 - \$8.32

2% ESG 095156 - \$1.50

\$25.20

PAID _____

BY ATTY _____

BY CLIENT _____

Insertion Date: 3/19/12

AD REFERENCE #3174088

BILLING ID - 37524

We Appreciate Your Business!

Please Remit Statement With Payment Upon Receipt.

To Ensure Your Payment Is Applied To Your Account Correctly

Please Put This Account Number On Your Check - BID 37524

Thank You.

AFFIDAVIT

STATE OF KANSAS \
- SS.
County of Sedgwick /

Mark Fletchall, of lawful age, being first duly sworn, deposeth and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle for 1 issues, that the first publication of said notice was

made as aforesaid on the 19th of

March A.D. 2012, with

subsequent publications being made on the following dates:

And affiant further says that he has personal knowledge of the statements above set forth and that they are true.

Mark Fletchall

Subscribed and sworn to before me this


19th day of March, 2012



Penny L. Case
Notary Public Sedgwick County, Kansas

Printer's Fee : \$25.20

LEGAL PUBLICATION
PUBLISHED IN THE WICHITA EAGLE
MARCH 19, 2012 (3174088)
PUBLIC NOTICE
2012/2013 HUD ONE-YEAR ACTION PLAN

 The City of Wichita has prepared the 2012/2013 One-Year Action Plan. Descriptions of the proposed 2012/2013 activities are included in the One-Year Action Plan.

Beginning March 21, 2012, citizens are provided 30 days to comment on the proposed 2012/2013 One-Year Action Plan. The public is invited to submit written comments to the Housing and Community Services Department, Community Investments Division, 332 N. Riverview, Wichita, Kansas, 67203 until April 19, 2012.

The proposed 2012/2013 One-Year Action Plan is available for review at City Hall, 455 N. Main in the City Council Office, 1st floor; Planning Department, 10th floor; City Manager's Office, 13th floor; Neighborhood City Halls - 2755 East 19th; 2820 South Roosevelt; 1749 South Martinson; 2700 North Woodland; the Main and branch Libraries, Housing and Community Services Department, 332 North Riverview and on the City's website at: www.wichita.gov/CityOffices/Housing. Visitors to the City's website will also find a link by which comments can be submitted electronically.

Individuals who require auxiliary aids and services for effective communication with City of Wichita personnel should contact the ADA Title II Coordinator in the Office of the City Manager, 316-268-2468 as soon as possible, but no later than 48 hours before the scheduled event or appearance. A summary of comments received will be submitted with the One-Year Action Plan to the U.S. Department of Housing and Urban Development.

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City of Wichita
City Council
April, 2011

Carl Brewer, Mayor
Lavonta Williams, District 1 and Vice Mayor
Pete Meitzner, District 2
James Clendenin, District 3
Michael O'Donnell II, District 4
Jeff Longwell, District 5
Janet Miller, District 6



CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about -
 - (a) The dangers of drug abuse in the workplace;
 - (b) The grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official

Date

Title

Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);
2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) _____, _____ (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;
3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its

jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

Compliance with Laws -- It will comply with applicable laws.

Signature/Authorized Official

Date

Title

Specific HOME Certifications

The HOME participating jurisdiction certifies that:

Tenant Based Rental Assistance -- If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

Eligible Activities and Costs -- it is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

Appropriate Financial Assistance -- before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

Signature/Authorized Official

Date

Title

ESG Certifications

The Emergency Solutions Grants Program Recipient certifies that:

Major rehabilitation/conversion – If an emergency shelter’s rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

Essential Services and Operating Costs – In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

Renovation – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

Supportive Services – The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

Matching Funds – The jurisdiction will obtain matching amounts required under 24 CFR 576.201.

Confidentiality – The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

Homeless Persons Involvement – To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted under the program.

Consolidated Plan – All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction’s consolidated plan.

Discharge Policy – The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate policies and protocols for the discharge of persons from

publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

Signature/Authorized Official

Date

Title

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.
2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ___ if there are workplaces on file that are not identified here.

This information with regard to the drug-free workplace is required by 24 CFR part 21.

7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):

*10. Name of Federal Agency:

Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.218

CFDA Title:

Community Development Block Grants/Entitlement Grants Program

*12. Funding Opportunity Number: N/A

*Title:

Funding Availability for the Community Development Block Grant Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Wichita, KS

*15. Descriptive Title of Applicant's Project:

Community Development Block Grant funded projects that include Housing projects, Public Service Projects, and Planning and Administrative Projects.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

*a. Applicant
KS-004

*b. Program/Project:
KS-004

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: July 1, 2012

*b. End Date: June 30, 2013

18. Estimated Funding (\$):

*a. Federal \$2,569,751.00

*b. Applicant

*c. State

*d. Local

*e. Other

*f. Program Income

*g. TOTAL \$2,569,751.00

*19. Is Application Subject to Review By State Under Executive Order 12372 Process?

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☒ c. Program is not covered by E.O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. *First Name: Carl

Middle Name:

*Last Name: Brewer

Suffix:

*Title: Mayor

*Telephone Number: 316-268-4331

Fax Number:

*Email: CBrewer@wichita.gov

*Signature of Authorized Representative:

Date Signed:

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application		*2. Type of Application <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Revision		*If Revision, select appropriate letter(s): * Other (Specify)	
*3. Date Received:		4. Application Identifier: M-11-MC-200004			
5a. Federal Entity Identifier: M-11-MC-200004			*5b. Federal Award Identifier: M-11-MC-200004		
State Use Only:					
6. Date Received by State:			7. State Application Identifier:		
8. APPLICANT INFORMATION:					
*a. Legal Name: City of Wichita					
*b. Employer/Taxpayer Identification Number (EIN/TIN): 48-6000653			*c. Organizational DUNS: 04-306-34-60		
d. Address:					
*Street1: 455 N. Main Street 2: *City: Wichita County: Sedgwick *State: KS Province: Country: US					
*Zip/ Postal Code: 67202					
e. Organizational Unit:					
Department Name: Housing and Community Services			Division Name: Community Investments		
f. Name and contact information of person to be contacted on matters involving this application:					
Prefix: Ms. Middle Name: Kathryn *Last Name: Vaughn Suffix:					
First Name: Mary					
Title: Director of Housing and Community Services					
Organizational Affiliation:					
*Telephone Number: 316-462-3795			Fax Number: 316-337-9103		
*Email: mkvaughn@wichita.gov					

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):

*10. Name of Federal Agency:

Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.239

CFDA Title:

HOME Investment Partnerships Program

*12. Funding Opportunity Number: N/A

*Title: Funding Availability for the HOME Investment Partnerships Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Wichita, KS

*15. Descriptive Title of Applicant's Project:

HOME Grant funded projects that include Housing Projects, CHDO Set-Aside Projects, and Administration.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

*a. Applicant
KS-004

*b. Program/Project:
KS-004

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: July 1, 2012

*b. End Date: June 30, 2013

18. Estimated Funding (\$):

*a. Federal \$1,223,447.00

*b. Applicant

*c. State

*d. Local

*e. Other

*f. Program Income

*g. TOTAL \$1,223,447.00

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☒ c. Program is not covered by E.O. 12372

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☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr.

*First Name: Carl

Middle Name:

*Last Name: Brewer

Suffix:

*Title: Mayor

*Telephone Number: 316-268-4331

Fax Number:

*Email: CBrewer@wichita.gov

*Signature of Authorized Representative:

Date Signed:

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application		*2. Type of Application <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation <input type="checkbox"/> Revision		*If Revision, select appropriate letter(s): * Other (Specify)	
*3. Date Received:		4. Application Identifier: S-11-MC-200004			
5a. Federal Entity Identifier: S-11-MC-200004			*5b. Federal Award Identifier: S-11-MC-200004		
State Use Only:					
6. Date Received by State:			7. State Application Identifier:		
8. APPLICANT INFORMATION:					
* a. Legal Name: City of Wichita					
* b. Employer/Taxpayer Identification Number (EIN/TIN): 48-6000653			*c. Organizational DUNS: 04-306-34-60		
d. Address:					
*Street1: 455 N. Main Street 2: *City: Wichita County: Sedawick *State: KS Province: Country: US					
*Zip/ Postal Code: 67202					
e. Organizational Unit:					
Department Name: Housing and Community Services			Division Name: Community Investments		
f. Name and contact information of person to be contacted on matters involving this application:					
Prefix: Ms.		First Name: Mary			
Middle Name: Kathryn					
*Last Name: Vaughn					
Suffix:					
Title: Director of Housing and Community Services					
Organizational Affiliation:					
*Telephone Number: 316-462-3795			Fax Number: 316-337-9103		
*Email: mkvaughn@wichita.gov					

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):

*10. Name of Federal Agency:

Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.231

CFDA Title:

Emergency Solutions Grant

*12. Funding Opportunity Number: FR-5594-N-01

*Title: Funding Availability for the Emergency Solutions Grants Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Wichita, KS

*15. Descriptive Title of Applicant's Project:

Emergency Solutions Grant funded projects that include Emergency Shelter & Street Outreach, Homelessness Prevention, HMIS, Rapid Re-Housing, and Administration.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

*a. Applicant KS-004

*b. Program/Project: KS-004

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: July 1, 2012

*b. End Date: June 30, 2013

18. Estimated Funding (\$):

*a. Federal \$223,388.00

*b. Applicant

*c. State

*d. Local

*e. Other

*f. Program Income

*g. TOTAL \$223,388.00

*19. Is Application Subject to Review By State Under Executive Order 12372 Process?

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☒ c. Program is not covered by E.O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

☐ Yes

☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr.

*First Name: Carl

Middle Name:

*Last Name: Brewer

Suffix:

*Title: Mayor

*Telephone Number: 316-268-4331

Fax Number:

*Email: CBrewer@wichita.gov

*Signature of Authorized Representative:

Date Signed:

City of Wichita
City Council Meeting
May 1, 2012

To: Mayor and City Council

Subject: Substantial Amendment to the 2011-2012 Third Program Year Action Plan

Initiated By: Housing and Community Services Department

Agenda: New Business

Recommendation: Approve the substantial amendment to the 2011-2012 Third Program Year Action Plan for the Emergency Solutions Grant Program, and authorize submission to the U.S. Department of Housing and Urban Development, release of Requests for Proposals, all necessary signatures and contract documents.

Background: Wichita is recognized as an “entitlement” city by the U.S. Department of Housing and Urban Development (HUD). This is based on a federal formula which looks at total population, the number of persons below the poverty level, the number of overcrowded housing units, the age of housing and the population growth lag. Because of the City’s “entitlement” status, Wichita receives Community Development Block Grant and HOME Investment Partnerships funding. In the past the City has also received Emergency Shelter Grant funds. During the 2011-2012 funding year HUD modified the ESG program and renamed it Emergency Solutions Grant.

Analysis: HUD provided \$124,982 in funding to the City of Wichita under the Emergency Shelter Grant program for FY 2011. The City is now eligible for \$70,318 in additional funding under Emergency Solutions Grant program guidelines, which includes an additional allocation of \$70,302, as well as \$16 of prior year unexpended funds. HUD requires that the City amend its 2011 Action Plan with a program description and expenditure plan for the Emergency Solutions Grant funds. The amendment which is attached reflects input from the Continuum of Care Coordinating Team which annually reviews ESG applications. Input was also solicited and received from volunteers and vendors who participated in the 2012 Homeless Point in Time Count.

The Emergency Solutions Grant program represents a shift in focus from paying for shelter costs to providing permanent housing. HUD encourages communities to incorporate that shift into local plans and to establish criteria which limit the amount that can be allocated for shelter and outreach services. The attached amendment allocates the maximum amount available for shelter services, with the remainder being available for permanent housing in the form of homeless prevention for those who are precariously housed or rapid re-housing for persons who are currently homeless. The local shelter service providers report that they turn away large numbers of persons in need of shelter due to lack of space, and therefore want to ensure that current shelter space continues to be funded with this resource.

The attached substantial amendment allocates specific funding amounts to Rapid Re-Housing and Homeless Prevention. These projections are based on the actual funding experience for the American Recovery and Reinvestment Act (ARRA)-funded Homelessness Prevention and Rapid Re-Housing program. Should the needs shift during the 2012 year, City staff will make appropriate adjustments between the two categories.

When local government considers substantial amendments to the One Year Action Plan HUD requires that the amendments be made available for public comment, usually for 30 days. No comments were received.

Financial Consideration: The City is required to submit the substantial amendment to the 2011 Action Plan in order to receive \$70,302 in federal funding for the homeless, and the \$16 prior year unexpended funds are available for reprogramming as part of this action. No City funds will be required to implement this program.

Goal Impact: Expenditure of Emergency Solutions Grant funds will impact Economic Vitality & Affordable Living, Core Area and Neighborhoods and Quality of Life goals.

Legal Consideration: The Law Department has approved the substantial amendment as to form.

Recommendation/Actions: It is recommended that the City Council approve the substantial amendment to the 2011-2012 Third Program Year Action Plan for the Emergency Solutions Grant Program, and authorize submission to the U.S. Department of Housing and Urban Development, release of Requests for Proposals, all necessary signatures and contract documents.

Attachments:

Substantial amendment to the Consolidated Plan 2011 Action Plan
Certifications and Standard Form 424

Substantial Amendment to the FY 2011 Annual Action Plan

Summary of Consultation Process

The Housing and Community Services Department (HCSD) is the grantee for Emergency Solutions Grant funding and has implemented the consultation process in accordance with the guidance issued on January 23, 2012. Specifically on February 7, 2012 the Director of the HCSD met with the Continuum of Care team and presented a review of the HEARTH Act. This was done in a power point presentation with hard copies delivered to each participant.

Allocation of Funds

The CoC was asked to determine how to allocate the funds. Following are the decisions:

Homeless Assistance – maximum available based on prior commitments: \$20,126

Rapid Re-Housing & Homeless Prevention: \$41,000

Homeless Management Information System (HMIS): \$634.70

Program Administration: \$8,541.30

Performance Standards – Homeless Assistance

The following performance measures are taken from the program outcomes for current Emergency Shelter Grant-funded service providers. Because of the range of services which can be funded under homeless assistance, the measures listed below include a range of participation levels. Specific measures will be further developed when Emergency Solutions Grant-funded contracts are awarded.

The range of performance standards will be:

- 90-100% of clients will accept referrals to services from the drop in center
- A minimum of 80% of clients will participate in case management
- 40-80% of clients will develop a housing plan, which may include referral for ESG rapid re-housing assistance
- 60-70% of clients will develop a financial stability plan
- 60-70% of clients will enroll in an educational or job training program

Performance Standards – Rapid Re-housing and Homeless Prevention

The City will administer this component of the Emergency Solutions Grant with the following performance measures:

- Applications will be reviewed and funding decisions made within two days of receipt of complete package.
- Clients will remain housed for at least 30 days following the end of assistance.

Funding, Policies and Procedures

The CoC agreed that the HCSD will administer the ESG through contracts with local service providers for Homeless Assistance. The HCSD will administer the Rapid Re-Housing and Homeless Prevention components using City staff.

Due to the fast turnaround required for developing the ESG program design, policies and procedures have not been completed. However the CoC was advised that policies will be presented to the CoC prior to being finalized.

Summary of Citizen Participation Process

In addition to consultation with the CoC, the citizen participation process for this substantial amendment includes two components.

The annual Point in Time Count took place on January 26, 2012, with the primary count activity taking place at an event which featured a variety of services and referrals for homeless persons and families. Many of the vendors who provided services were outside the traditional homeless services network, as were most of the volunteers. The vendors and volunteers were asked to comment on their perception of priority needs of the homeless based on their experience at the Point in Time event, or other related knowledge on this issue. The top three priority needs identified were: 1) rent assistance to help persons facing eviction, to remain housed; 2) shelter operations; and 3) case management to help people find affordable housing.

The City also makes substantial amendments available for public input for 30 days prior to finalizing the document. The public is notified of the public input period through local media including the City's news channel.

Match

- The City will match the administrative funds with cash and in-kind resources in the form of staff oversight of the employee who will process Rapid Re-Housing and Homeless Prevention case processing. It is expected that the value of this match will far exceed the minimum required for the match.
- Shelter providers will be required to provide cash or in-kind resources to fully match the funds which will be allocated for homeless assistance. This will be confirmed through written contracts and agreements.
- The Rapid Re-Housing and Homeless Prevention funds will be matched as follows:
Rent assistance through the City's Housing First program: \$11,000
Program administration not charged to the grant: \$5,000
Community Development Block Grant: \$20,000 (staff oversight, inspections)
In-kind, non-cash resources: \$11,000 (supportive services, office costs, equipment, etc.)

Proposed Activities and Overall Budget

- a. Proposed Activities: The 2011 Annual Action Plan includes strategies to address the needs of the homeless for immediate shelter as well as to provide permanent housing. Those strategies will be the focus of the Emergency Solutions Grant funding as well. Following are details of the proposed activities to be implemented under this amendment:

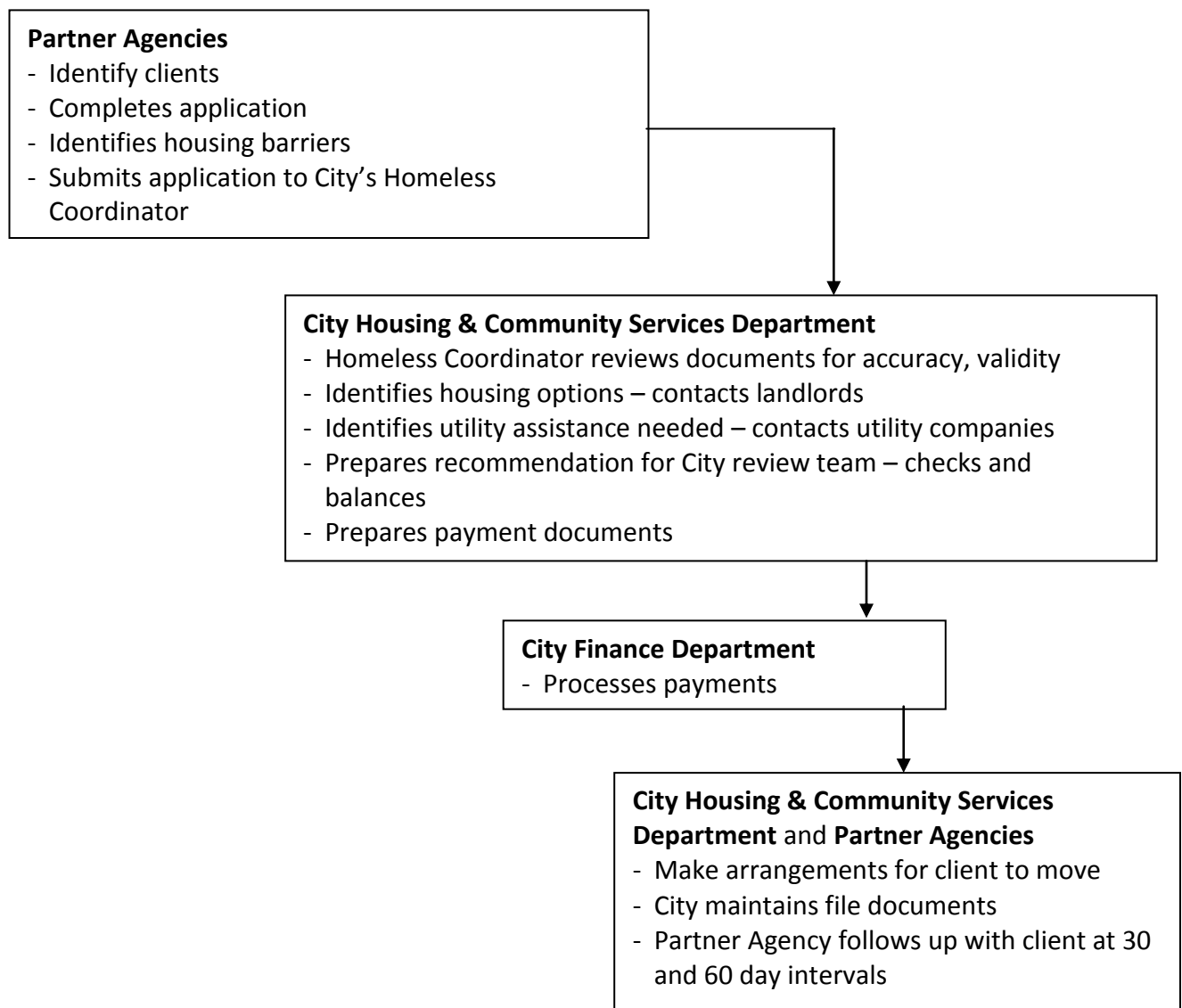
- Homeless Assistance: \$20,126

The City will contract with service providers for emergency shelter needs for the general homeless population and those fleeing domestic violence situations. A Request for Proposals will be issued to identify providers who will meet the immediate needs for emergency shelter for homeless persons. The proposals will be evaluated by a City staff team, which will include a formerly homeless person.

- Rapid Re-Housing and Homeless Prevention: \$41,000

The City will receive applications from agencies who provide emergency shelter and whose clients are in need of rapid re-housing. Immediately following approval of an application, payments will be processed for landlords and/or utility companies in order to secure housing for the clients. Payments will not be made to clients directly.

Following is a flow chart describing the process:



- Eligibility criteria will include:
 - Currently meets the current HUD definition of homelessness (RR)
 - Currently facing an imminent threat of eviction from rental property (HP)
 - Exhaustion of other resources (financial, agency, family, etc.) to address the short term need for housing
 - Is willing to work with a case manager to address barriers and achieve stability
- Assistance parameters
 - No more than two months rent will be authorized without review for exceptional circumstances
 - Payment to landlords will result in ability to be housed (RR) or will cancel eviction proceedings (HP)
 - No late rental fees will be paid with ESG funds
 - Up to three months utility arrears will be authorized, plus current bills

- Number to be served
The number of homeless persons/families to be served in the homeless assistance component will be 577. This is based on the total number of clients served with current shelter support funding.

Based on the City's experience as the administrator of the ARRA-funded HPRP, it is anticipated that the average payment for housing assistance will be \$2,500 per family. That will allow for approximately 20 families to be served.

- Standard objective and outcome categories
The standard objective is housing stability for persons who are homeless or near homeless. The outcome categories will include speed with which homeless persons are housed; collaboration with local agencies; and housing stability for greater than 60 days.
- Start and Completion Dates
The program will start within 14 days of HUD notification of approval of the Substantial Amendment. In the case of homeless services, this will correspond with the date the RFP is issued. In the case of rapid re-housing and homeless prevention, this will be the date that non-financial agreements are finalized with partner agencies so that referrals can be made immediately thereafter.
- ESG and other funding amounts
The City will utilize all Emergency Solutions Grant funds (\$70,302 for FY 2011). In addition, the following resources will also provide support to this program:
City General Funds: \$11,000 (client rent)
Wichita Housing Authority: \$5,000 (client rent)
Community Development Block Grant: \$20,000 (staff oversight, inspections)
In-kind, non-cash resources: \$11,000 (supportive services, office costs, equipment, etc.)

- Performance indicators

As noted elsewhere in this amendment, performance indicators will reflect reasonable expectations associated with the specific activity to be funded. Following are indicators which will be included. These are illustrative and not representative of all indicators.

- Shelter operations (general): a minimum of 80% will become engaged with a case manager
- Shelter operations (domestic violence): 40-80% will develop a housing plan

- Projected accomplishments

The accomplishments will tie to the performance indicators, with the overall accomplishment being development of a plan to move the homeless into affordable, stable, permanent housing. Funding for all activities will be established for 12-month completion.

Discussion of Funding Priorities

The need for continued support of emergency shelter has been demonstrated in the number of persons who are turned away from local agencies because the shelters are at capacity. In 2011 100 persons were turned away from the Salvation Army due to lack of space in their general shelter program. Catholic Charities reports approximately 80 families were turned away each month in 2011 due to lack of space in their shelter for persons fleeing domestic violence situations. This increase is true of the drop in services as well, with that program experiencing an increase of over 700 visits during 2011.

For these reasons the City will make \$20,126 available for agencies to continue providing *homeless assistance* services for homeless persons seeking shelter and/or services.

The City also recognizes that permanent housing is the ultimate goal for all homeless service programs. The ARRA-funded HPRP bore witness to this need. Local community needs are most evident in the 1,000 or more families on the Public Housing waiting list, and over 3,000 families on the Section 8 Housing Choice Voucher waiting list. The City/County 2011 homeless point in time count identified over 600 homeless persons in the local community. These factors combine to support the City's recommendation that \$41,000 be designated for *rapid re-housing and homeless prevention*. HMIS processing needs are not fully known and therefore \$635, will be set aside to be used as needed for HMIS support.

The following charts represent the calculations which were made to support the funding priorities in this plan. The charts were completed consistent with Emergency Solutions Grant program guidance.

Emergency Shelter Grant – 2010 Funding Summary

Activity Type	Obligated Amount	% of Original Allocation
Homeless Assistance	\$119,003	95%
Homelessness Prevention	0	0
Administrative Activities	\$6,130	5%

2011 Allocation(s)

Emergency Shelter Grant	\$124,982
Emergency Solutions Grant	\$70,302
Total	\$195,284
60% of Total	\$117,170

Program Administration - 2011

Emergency Shelter Grant	\$124,982
Emergency Solutions Grant	\$70,302
Total	\$195,284
7.5% of Total	\$14,646
Amount previously committed	\$6,105
Amount available from new ESG	\$8,541

The total amount available for program administration is 7.5% of the total 2011 allocation.

According to ESG program guidance, the maximum allowable for homeless assistance activities for the entire 2011 allocation is the greater of the 2010 homeless assistance (\$119,003) or 60% of the total 2011 allocation (\$117,170).

ESG program guidance further states that the maximum allowable for 2011 based on this calculation must be reduced by the amount already allocated to homeless assistance in 2011. The following calculation provides the amount available for allocation to homeless assistance from the second allocation.

Maximum available for homeless assistance: \$119,003
Amount already allocated to homeless assistance: \$98,877
Difference available for homeless assistance: \$20,126

As a result of its experience administering the ARRA-funding HPRP and the positive outcomes which were achieved, the City agrees with HUD that rapid re-housing and homeless prevention are sound strategies for ending homelessness in the Wichita community and the nation. This Substantial Amendment will allocate \$41,000 (over 50%) of the Emergency Solutions Grant allocation, to these activities. In doing so, the City will achieve Objective 3 in *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*: “provide affordable housing to people experiencing or most at risk of homelessness”.

Detailed Budget

See Table 3.

Written Standards for Provision of ESG Assistance

Standards have not been completely developed however following are the concepts which will be used to complete the standards:

- a. Applicant eligibility. Applicants must meet HUD homeless definition and their housing status must be resolvable within the funding parameters outlined herein.
- b. Coordination. The City will establish memoranda of agreement with local service providers which will include application criteria and case management expectations of the referring agency. Local service providers will refer clients for RR or HP by completion of an application packet, which will include an analysis of other resources available to the client. The City's homeless specialist will review materials and present them to the City team for review and approval.
- c. Prioritization. The City will consider all completed applications with equal priority, based on the date a complete application packet is submitted. However, homeless prevention applications will be prioritized if necessary to avoid an eviction.
- d. Participant rent payment. The City will expect that participants will pay up to 30% of their income toward their housing costs, as long as that arrangement does not place an unrealistic financial burden on the family. There will be flexibility exercised with this expectation however, to take into account special circumstances. For instance if utility arrears exist beyond the program parameters, the City may schedule the client to pay those arrears prior to being scheduled to participate in current rent payments.
- e. Assistance calculations. Participants will be assisted for up to two months going forward, with rent and utilities. Utility arrears up to two months will also be provided if necessary to secure or maintain stable housing. The City will make payments directly to utility companies and/or landlords on behalf of clients and after securing from them, confirmation that the payment will resolve the housing/utility issues preventing housing stability. Payments will not be made to clients.
- f. Duration of assistance. The City will apply the funding parameters described herein to each client. However the City will also exercise reasonable flexibility in the event that special circumstances warrant payments beyond the parameters established.

Process for Making Sub-awards

The homeless assistance funds will be awarded to agencies who respond to a City-issued Request for Proposals. The CoC will be provided an opportunity to review responsive proposals however proposers who are also members of the CoC will not be allowed to participate in that review. The CoC will make funding recommendations to the City of Wichita.

Homeless Participation Requirement

The City of Wichita will meet the requirement for participation of a current or formerly homeless person in policy decision-making for the ESG program, through the local Continuum of Care which has such representation. As noted in the sub-award discussion, the homeless representative(s) will participate in the decision making process as to which agencies are recommended for homeless assistance funding.

Performance Standards

Consistent with the ESG program guidance the following performance standards will be used to determine the effectiveness of the delivery of services.

Each recipient of ESG funds will be evaluated on:

- Their collaboration with other ESG fund recipients on behalf of their clients (esp. between homeless assistance providers and rapid re-housing/homeless prevention administrators)
- Their collaboration with other community resources on behalf of their clients
- The speed with which homeless persons are placed in sustainable housing

Certifications

All required certifications are attached to this document.

Table 3 – FY 2011 Detailed Budget					
First Allocation	\$124,982	FY 2011 Emergency Shelter Grants/Emergency Solutions Grants Program Allocations			
Second Allocation	\$70,302				
Grant Amount	\$195,284				
Total Administration	\$14,646				
		First Allocation		Second Allocation	Total Fiscal Year 2011
	Eligible Activities	Activity Amount	Reprogrammed Amount	Activity Amount	Activity Amount
Emergency Shelter Grants Program	Homeless Assistance	\$98,877	\$0		\$98,877
	<i>Rehab/Conversion</i>				\$0
	<i>Operations</i>	\$66,591			\$66,591
	<i>Essential Services</i>	\$32,286			\$32,286
	Homelessness Prevention	\$20,000			\$20,000
	Administration	\$6,105			\$6,105
	Emergency Shelter Grants Subtotal	\$124,982	\$0		\$124,982
Emergency Solutions Grants Program	Emergency Shelter**			\$20,126	\$20,126
	<i>Renovation**</i>			\$0	\$0
	<i>Operation**</i>			\$0	\$0
	<i>Essential Service**</i>			\$0	\$0
	<i>URA Assistance**</i>			\$0	\$0
	Street Outreach - Essential Services**			\$0	\$0
	HMIS			\$635	\$635
	Rapid Re-housing			\$16,400	\$16,400
	<i>Housing Relocation and Stabilization Services</i>				\$0
	<i>Tenant-Based Rental Assistance</i>				\$0
	<i>Project-Based Rental Assistance</i>				\$0
	Homelessness Prevention			\$24,600	\$24,600
	<i>Housing Relocation and Stabilization Services</i>				\$0
	<i>Tenant-Based Rental Assistance</i>				\$0
	<i>Project-Based Rental Assistance</i>				\$0
	Administration			\$8,541	\$8,541
	Emergency Solutions Grants Subtotal		\$0	\$70,302	\$70,302
			Total Grant Amount:		\$195,284

****Allowable only if the amount obligated for homeless assistance activities using funds from the first allocation is less than the expenditure limit for emergency shelter and street outreach activities (see Section III.B. of this Notice).**

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission		*2. Type of Application		*If Revision, select appropriate letter(s):	
<input type="checkbox"/> Preapplication		<input type="checkbox"/> New			
<input checked="" type="checkbox"/> Application		<input checked="" type="checkbox"/> Continuation		* Other (Specify)	
<input type="checkbox"/> Changed/Corrected Application		<input type="checkbox"/> Revision			
*3. Date Received:		4. Application Identifier: S-11-MC-200004			
5a. Federal Entity Identifier: S-11-MC-200004			*5b. Federal Award Identifier: S-11-MC-200004		
State Use Only:					
6. Date Received by State:			7. State Application Identifier:		
8. APPLICANT INFORMATION:					
* a. Legal Name: City of Wichita					
* b. Employer/Taxpayer Identification Number (EIN/TIN): 48-6000653			*c. Organizational DUNS: 04-306-34-60		
d. Address:					
*Street1: 455 N. Main Street 2: *City: Wichita County: Sedawick *State: KS Province: Country: US					
*Zip/ Postal Code: 67202					
e. Organizational Unit:					
Department Name: Housing and Community Services			Division Name: Community Investments		
f. Name and contact information of person to be contacted on matters involving this application:					
Prefix: Ms.		First Name: Mary			
Middle Name: Kathryn					
*Last Name: Vaughn					
Suffix:					
Title: Director of Housing and Community Services					
Organizational Affiliation:					
*Telephone Number: (316) 462-3795			Fax Number: (316) 337-9103		
*Email:					

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):

*10. Name of Federal Agency:

Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.231

CFDA Title:

Emergency Solutions Grant

*12. Funding Opportunity Number: FR-5594-N-01

*Title: Funding Availability for the Emergency Solutions Grants Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Wichita, KS

*15. Descriptive Title of Applicant's Project:

Emergency Solutions Grant funded projects that include Emergency Shelter & Street Outreach, Homelessness Prevention, HMIS, Rapid Re-Housing, and Administration.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

*a. Applicant KS-004

*b. Program/Project: KS-004

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: May 1, 2012

*b. End Date: June 30, 2013

18. Estimated Funding (\$):

*a. Federal \$70,302.00

*b. Applicant

*c. State

*d. Local

*e. Other

*f. Program Income

*g. TOTAL \$70,302.00

*19. Is Application Subject to Review By State Under Executive Order 12372 Process?

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on

☒ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E.O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☒ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr.

*First Name: Carl

Middle Name:

*Last Name: Brewer

Suffix:

*Title: Mayor

*Telephone Number: 316-268-4331

Fax Number:

*Email: CBrewer@wichita.gov

*Signature of Authorized Representative:

Date Signed:

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: HOME Loan Restructure; South Beech Development, LLC (District VI)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve the HOME loan restructure, and authorize the necessary signatures.

Background: On September 12, 1995, the City Council approved a loan from the City of Wichita's HOME Investment Partnerships Program (HOME Program) grant to South Beech Development, LLC, in the amount of \$195,000. The loan was provided as "gap" financing for the affordable housing component of a development project to be located at 230 N. Mosley, which would offer commercial space and mixed-income residential housing. The project was also financed with Housing Tax Credits, a private bank loan, and deferred developer fees. The terms of the HOME loan included an interest rate of 7.25%, with payments to be made from funds remaining after vacancy costs, operating expenses, superior lien debt services, deferred developer fees, and preferential cash flow. The loan is unsecured, becomes due March 15, 2026, and shall be extended until such time as the first mortgage loan is paid in full.

The City, as required by federal regulations applicable to HOME Program funding, holds a long-term deed restriction on the property which establishes the affordability period applicable to the project. The deed restriction provides for rent restrictions on four HOME-assisted apartment units within the project, in addition to other obligations related to HOME Program requirements. The project is monitored annually by Housing and Community Services Department staff in order to ensure continued compliance with HOME Program regulations and the terms of the long-term deed restriction. The project is considered to be in compliance. The HOME loan affordability period ends April 21, 2014.

Analysis: David Burk and Philip Perry are managing members of South Beech Development LLC. Mr. Burk and Mr. Perry each own .5% interest in the project. The balance of ownership interest is held by First National Bank of Abilene, the Tax Credit Member. Mr. Perry has requested restructure of the HOME loan, to include forgiveness of the outstanding interest and reduction of the interest rate. Mr. Perry explains that the project has not generated the expected, sufficient cash flow needed to make payments on the HOME loan. He further explains that the numerous construction projects that were initiated in the Old Town area at the time the development project was completed caused problems with leasing the commercial space in the project. Further, he indicated that it was necessary to obtain a private sector second mortgage loan in order to further improve the commercial space, thereby increasing debt service for the project. No payments have been made on the HOME loan to date. The loan balance of \$195,000 plus \$368,437 in accrued interest was outstanding, as of April 18, 2012. Mr. Burk has remitted his portion of the accrued interest, and thus, the accrued interest amount is reflective of his payment.

The first mortgage loan on the property became due November 1, 2011. Deferred developer fees have not been collected, and managing members, as well as individual members, have extended loans to the project in the amount of \$116,711. The first mortgage lender is currently granting extensions on a 30-day basis, while Mr. Perry works to refinance the first mortgage loan. However, Mr. Perry advises he is finding it difficult to refinance the project due to the significant amount of interest outstanding on the HOME loan. He is seeking a loan for interim first mortgage refinancing until such time as a U.S. Department of

Housing and Urban Development loan with favorable terms can be secured. The interim loan may require further investment on the part of managing members, collectively or individually.

It is important to the City for the project to remain viable. The four HOME-assisted units within the development must remain affordable, under applicable HOME Program regulations, through April 21, 2014. The City will incur a financial liability to the U.S. Department of Housing and Urban Development, in the amount of \$195,000, if the affordability period is not successfully completed.

Staff has worked with Mr. Perry to negotiate a restructuring of the HOME loan. The proposed terms will provide for continued viability of the project by enhancing South Beech Development, LLC's ability to refinance. Terms of the restructure will also provide for an earlier, fixed maturity date, a security interest in the property, and an extended affordability period for the four HOME-assisted apartment units, until December 31, 2019, unless the loan is prepaid.

Financial Considerations: Terms of the restructured HOME loan would include forgiveness of the outstanding accrued interest and a reduction of the interest rate to 2%, which is reflective of the City's cost of funds. Fixed monthly debt service payments to the City, in the amount of \$2,500 would be required. In addition, South Beech Development, LLC would be required to remit all net operating income earned, following payment of the first mortgage debt service and the HOME loan debt service to the City, in the form of a supplemental annual payment, to be applied to the HOME loan. Payments to be received are considered to be program income and will be used to fund additional HOME-eligible affordable housing projects at a time when HOME grant funds have been reduced.

Goal Impact: The proposed project contributes to the Economic Vitality and Affordable Living goals by creating and sustaining affordable housing.

Legal Considerations: The Law Department has reviewed the loan modification agreement, the mortgage, and the amended HOME Regulatory Agreement, and has approved them as to form. The Law Department has also reviewed the proposed transaction for compliance with the HOME regulations.

Recommendations/Actions: It is recommended that the City Council approve the HOME loan restructure, and authorize the necessary signatures.

Attachments: Loan modification agreement, mortgage document, amended regulatory agreement.

MORTGAGE

THIS MORTGAGE is dated May 1, 2012, between South Beech Development, LLC, a Kansas Limited Liability Company (referred to below as “Borrower”); and **THE CITY OF WICHITA KANSAS, A MUNICIPAL CORPORATION OF THE STATE OF KANSAS**, whose address is 455 North Main Street, Wichita, Kansas USA 67202 (referred to below as “Lender”).

Borrower owes Lender the principal sum of One Hundred and Ninety-Five Thousand and no/100 Dollars (U.S.\$ 195,000). This debt is evidenced by borrower’s Promissory Note dated July 31, 1996, and the borrower’s Loan Modification Agreement, dated May 1, 2012, with the full debt, if not paid earlier, due and payable on December 31, 2019. This Mortgage secures to Lender: (a) the repayment of debt evidenced by the Note and Loan Modification Agreement, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums with interest, advanced under paragraph 7 to protect the security of this Mortgage; and (c) the performance of Borrower’s covenants and agreements under this Mortgage, and the Note, and the Loan Modification Agreement. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in **SEDGWICK COUNTY, KANSAS**:

That part of Lot 14 on Mosley Avenue, East Wichita, Sedgwick County, Kansas, described as beginning at the S.W. Corner of said Lot 14; thence north along the west line of said Lot 14, 80.11 feet; thence east to a point on the east line of said Lot 14, said point being 80.21 feet north of the S.E. Corner of said Lot 14; thence South 80.21 feet to the S.E. Corner of said Lot 14; thence west to the point of beginning. Commonly referred to as 230 North Mosley, Wichita, Kansas

which has the address of **230 N. Mosley, Wichita, Kansas**

TOGETHER With all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by the Mortgage. All of the foregoing is referred to in this Mortgage as the “Property”.

BORROWER COVENANTS that the Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS MORTGAGE combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal and interest on the debt evidenced by the Note and Loan Modification Agreement and any prepayment and late charges due under the Note.

1. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender shall be applied; first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

2. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall pay these obligations directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Mortgage unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to lender, (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to this Mortgage. If Lender determines that any part of the Property is subject to a lien, to which Lender did not consent, and which may attain priority over this Mortgage, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving notice.

3. Hazard of Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 5.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged; if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 17 the Property is acquired by Lender; Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to lender to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

4. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property within sixty days after the execution of this Mortgage and shall continue to occupy the Property for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Mortgage or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 15 by causing the action of proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Mortgage or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property. If this Mortgage is on leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

5. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien that has priority over this Mortgage, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 5, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 5 shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable with interest, upon notice from Lender to Borrower requesting payment.

6. Inspection. Lender or its agents may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Mortgage immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Mortgage whether or not the sums are then due.

If the Property is abandoned by Borrower, or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30

days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, whether to restoration or repair of the Property or to the sums secured by this mortgage, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments or change the amount of such payments.

8. Borrower Not Released: Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 14. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Mortgage but does not execute the Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Mortgage; (b) is not personally obligated to pay the sums secured by this Mortgage; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent.

10. Loan Charges. If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial repayment without any prepayment charge under the Note.

11. Notices. Any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address at City of Wichita Housing and Community Services Department, 332 N. Riverview, Wichita, Kansas, 67203 stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in the Mortgage shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph 11.

12. Governing Law; Severability. This Mortgage shall be governed by federal law and the law of the State of Kansas. In the event that any provision or clause of this Mortgage or the Note is legally determined to be invalid or otherwise unenforceable, the remaining provisions of the affected Mortgage or Note shall be interpreted in a manner by which they can be given full effect without such provisions. To this end the provisions of this Mortgage and the Note are declared to be severable.

13. Borrower's Copy. The Borrower shall be given one conformed copy of the Note, Loan Modification Agreement, and this Mortgage.

14. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice of demand on borrower.

15. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) 5 days (or such period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in the Mortgage; or (b) entry of a judgment enforcing this Mortgage. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Mortgage and the Note as if no acceleration had occurred; (b) cures any default in any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this mortgage shall continue unchanged. Upon reinstatement by Borrower, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 14.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of hazardous Substances that are generally recognized to be appropriate to normal uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim demand, lawsuit or other action by any governmental regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law.

As used in this paragraph 16 "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the State of Kansas and the City of Wichita that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Mortgage (but not prior to acceleration under paragraph 14 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Mortgage without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including but not limited to, reasonable attorneys' fees and costs of title evidence.

18. Release. Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay any recordation costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Mortgage executed by Borrower and recorded with it.

South Beech Development, LLC
A Kansas Limited Liability Company
By: Philip L. Perry, Manager

Borrower

(Space Below This Line For Acknowledgment)

State of _____, _____ County ss:

I, The Undersigned, a Notary Public in and for said county and state, certify that __Philip L. Perry, Manager, South Beech Development, LLC, A Kansas Limited Liability Company__ personally known to me to be the same person whose name is subscribed to the foregoing Mortgage, appeared before me this day in person, and acknowledged that __Philip L. Perry__ signed and delivered this mortgage as _his_ free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2012.

My Commission Expires:

Notary Public

Approved As To Form
Gary E. Rebenstorf, Director of Law

**HOME INVESTMENT PARTNERSHIP RENTAL HOUSING PROGRAM
REGULATORY AGREEMENT AND ADDENDUM TO RESTRICTIVE COVENANT AND DEED
RESTRICTON**

THIS AGREEMENT is made as of this 17th day of April, 2012 by and between **South Beech Development LLC, a Kansas Limited Liability Company**, who executed a funding agreement, note, loan modification, restrictive covenant and deed restriction, and mortgage, jointly and severally, hereinafter referred to as DEVELOPER, and the **CITY of WICHITA, KANSAS**, hereinafter referred to as the CITY, and amends and supplements a Restrictive Covenant and Deed Restriction dated December 13, 1999, and filed of record February 25, 2000, at Film 2018, and pages 0621, 0622, and 0623.

RECITALS

A. DEVELOPER received funding in the amount of \$195,000 under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended in order for DEVELOPER to rehabilitate the building located at:

That part of Lot 14 on Mosley Avenue, East Wichita, Sedgwick County, Kansas, described as beginning at the S.W. Corner of said Lot 14; thence north along the west line of said Lot 14, 80.11 feet; thence east to a point on the east line of said Lot 14, said point being 80.21 feet north of the S.E. Corner of said Lot 14; thence South 80.21 feet to the S.E. Corner of said Lot 14; thence west to the point of beginning. Commonly referred to as 230 North Mosley, Wichita, Kansas

(Commonly known as 230 N. Mosley.)

B. THE CITY in reliance upon the representations set forth in DEVELOPER'S application for the Loan and Grant Funding has approved the Loan and Grant Funding upon condition that DEVELOPER enter into a regulatory agreement regarding the use and rental of the residential dwelling units located upon the Property.

NOW, THEREFORE, IN CONSIDERATION of THE CITY'S approval of the funding THE CITY AND DEVELOPER agree as follows:

1. Authorized Initial "HOME Rents", HOME-Assisted Units: Rents must comply with the requirements of the HOME Investment Partnership Program (HOME) which may be found at 24, CFR, Part 92, for all designated HOME-assisted units. The developer shall maintain a total of four (4) HOME-assisted units. The units are designated as "floating" under HOME definitions with three (3) of the HOME-assisted units to be one-bedroom units and one (1) of

the HOME-assisted units to be a two-bedroom unit. At least 20% of the HOME-assisted units must be leased to households earning 50% or less of median annual income for the area, as determined by HUD. There will be one (1) one-bedroom unit and one (1) two-bedroom unit set-aside. The remaining two (2) HOME-assisted units may be leased to families earning 60% or less of the median annual income for the area, as determined by HUD.

2. The initial rents charged (based upon the above) shall be as follows:

1 Bedroom Units: \$370.00, following deduction of applicable utility allowance

2 Bedroom Units: \$450.00, following deduction of applicable utility allowance

THE CITY and DEVELOPER agree that the figures for the utility allowances are to be provided by the City of Wichita's Housing and Community Services Department.

3. Location of HOME-Assisted Units. DEVELOPER shall maintain distribution of HOME-assisted units throughout the development, for the duration of this agreement. HOME-assisted units must not be concentrated within a specific area of the development or on a single floor.
4. Additional Charges. DEVELOPER may charge any tenant or other occupant of the Property such amounts as may be mutually agreed upon from time to time between such tenant or occupant for any facilities or services which may be furnished by DEVELOPER to such tenant or occupant, in addition to the facilities or services listed in Paragraph 1, above. DEVELOPER shall not require, as a condition of occupancy or leasing of any dwelling unit in the Property, any other consideration or deposit, except for the prepayment of one month's rent and a security deposit not to exceed one additional month's rent.
5. Increase in Authorized Gross Monthly Rental; Over-Income Tenants: THE CITY acknowledges that HUD will annually publish Fair Market Rents and calculations of rents affordable to households earning 50% and 60% of median (HOME Rents) so that owners can establish new HOME Rents for HOME-assisted units, should they choose to do so.

THE CITY shall provide such information to the DEVELOPER annually upon which the DEVELOPER may formally request concurrence from THE CITY for any proposed rent increase. DEVELOPER acknowledges and agrees that over-income tenants, however, will be required to pay increased rents, i.e. 30% of their adjusted gross income if their incomes are greater than 80% of the area median income. (If the income of a tenant occupying a Low HOME rent unit increases, but does not exceed 80% of area median income, the unit becomes a High HOME rent unit. To replace the Low HOME rent unit, the owner must rent the next available unit to a very-low-income tenant. Subject to the terms of the lease, the rent of the initial tenant whose income has increased may be increased to the High HOME rent for the unit.

If a HOME-unit tenant's income rises above 80% of the area median income, the unit this tenant occupies is still considered to be a HOME unit. The rent of the unit must be adjusted to 30% of the tenant's adjusted income for rent and utilities, as stated previously. However, the rent may not exceed the market rent for comparable, unassisted units in the neighborhood. The next available unit in the project of comparable size or larger must be rented to a HOME-eligible household. Once the new unit is leased to a HOME-eligible household, the unit occupied by the over-income tenant is no longer considered to be HOME-assisted, and the rent of that unit can be adjusted as appropriate.)

The preceding two paragraphs shall not apply with respect to funds made available under this part for units that have been allocated a low income housing tax credit by a housing credit agency pursuant to Section 42 of the Internal Revenue Code, 1986, (26 U.S.C.42).

If THE CITY approves a rent increase, DEVELOPER may implement the increase at any time subject to the lease terms and thirty days notice to the tenants. During the term of this Agreement,

the DEVELOPER shall notify tenants in writing of any rent increase which exceed, in the aggregate, the gross monthly rental initially allowed under this Agreement.

6. Occupancy Limits. Twenty percent (20%) of the HOME-assisted units in each structure, at the time of lease-up must be occupied by households with incomes at or below fifty percent (50%) of the City's median household income; eighty percent (80%) of the HOME-assisted units must be occupied by households with incomes at or below sixty percent (60%) of the median household income; and vacant units can be used to meet the 50% or 60% of the median household income test if the owner agrees to commit the required units to eligible tenants.

The twenty percent (20%) rule only applies to projects with three or more rental units, or in the case of an owner of multiple one- or two-unit projects with a total of three or more rental units. The occupancy limit rule applies to initial and subsequent occupants.

7. Conversions. DEVELOPER agrees not to convert the rental units to condominiums from the date rehabilitation is completed for the length of the period specified in this agreement.
8. Discrimination. DEVELOPER agrees not to discriminate from the date rehabilitation is completed, for the length of the compliance period, against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any Federal, State or local housing assistance program or on the basis that the tenants have a minor child or children residing with them.
9. Affirmative Marketing Plan. DEVELOPER agrees to have in place and implement an Affirmative Marketing Plan for length of the compliance period. As part of said Affirmative Marketing Plan DEVELOPER shall:
 - a. Display the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.
 - b. Display the HUD Fair Housing Poster and Equal Housing Opportunity logo in all offices in which rental activity takes place.
 - c. Send notices of vacancies (using form provided by the City) to agencies from a list provided by the City.
 - d. The Developer must keep a record of its affirmative marketing activities for the year and report these activities to the City of Wichita as part of its annual report, due July 10 of each year.
10. Housing Quality/Housing Code Standards. DEVELOPER agrees to permit THE CITY to conduct an on-site inspection of each rental unit so that compliance with applicable Housing Code standards can be determined. DEVELOPER further agrees to allow THE CITY to re-inspect each rental unit on an annual basis, throughout the period of affordability.
11. Reports. The DEVELOPER shall furnish THE CITY with annual occupancy reports and shall answer THE CITY'S specific questions relative to tenant income and family size to determine compliance with occupancy requirements.
12. Records. During the term of this Agreement, the Property, and all equipment, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating to the Property, shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by THE CITY, the Comptroller General of the United States, or THE CITY'S or Comptroller's duly authorized agents. Specifically, the foregoing includes all records, calculations and information necessary to support gross monthly rental increases in accordance with Paragraph 3 of this Agreement, all required notices of

such increase, and all leases or written notices to tenants.

13. Default; Remedies. Upon violation of any provision of this Agreement by the DEVELOPER, THE CITY may give written notice thereof to the DEVELOPER, by registered or certified mail, addressed to the DEVELOPER'S address as stated in this Agreement, or to such other address(es) as may subsequently be designated by the DEVELOPER. If such violation is not corrected to the satisfaction of THE CITY within 30 days after the date such notice is mailed, or within such further time as THE CITY reasonably determines is necessary to correct the violation, without further notice THE CITY may declare a default under this Agreement and under the mortgage or deed of trust securing any Loan and may proceed to initiate any or all remedies at law or in equity available in the event of a default under such mortgage or deed of trust, including accelerating the due date of the entire indebtedness and foreclosure of the mortgage or deed of trust. In addition, THE CITY may advise the tenants in the Property of the violation.

14. Notice to Tenants of this Agreement. DEVELOPER agrees during the term of this Agreement to include in each tenant's lease a written notice in the following form:

The rents charged Tenants in this building are subject to a Regulatory Agreement between the Landlord and the City of Wichita, Kansas, for a period of 15 years from completion of rehabilitation financed in whole or in part by a loan under Title II of the Cranston-Gonzalez Affordable Housing Act of 1990, as amended (104 Stat. 4094-4128) 12701 - 12839. One copy of this Agreement will be made available to each Tenant by Landlord upon request.

(The inclusion of the foregoing language in any lease shall be conclusive evidence of its receipt by the tenant.)

15. Additional Agreement. The provisions of this Agreement are in addition to, and do not amend or supersede in any respect, the note, funding agreement, loan modification agreement, or the mortgage securing any City Loan on the property.
16. Severability. The invalidity of any paragraph or provision of this Agreement shall not affect the validity of the remaining paragraphs and provisions thereof.
17. Successors Bound. Notwithstanding any sale, lease or other transfer of the Property, this Agreement shall run with the land and bind any successors or assigns of the DEVELOPER during the term of this Agreement, except that upon foreclosure by a THE CITY or other transfer in lieu of foreclosure, the affordability period shall be suspended if the foreclosure by a THE CITY or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, non-profit sponsors or others to take actions that would avoid termination of low-income affordability. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the terms of the affordability period, the owner of record, prior to the foreclosure or transfer in lieu of foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project or Property, the affordability period shall be revived according to its original terms. DEVELOPER acknowledges and agrees that THE CITY may record this Agreement with the Register of Deeds of Sedgwick County along with the mortgage securing any loans.
18. Effective Date and Term. This regulatory agreement/addendum shall be effective on the date of its execution by the DEVELOPER. This Agreement shall automatically terminate upon repayment of all amounts owed under the note dated July 31, 1996, as modified by the loan modification agreement dated April 17, 2012, but in no event, no earlier than April 24, 2014.

This Agreement is duly executed by the parties to take effect as stated in Paragraph 18.

Approved As To Form,
Gary E. Rebenstorf, Director of Law

_____[Space Above This Line For Recording Data]_____

LOAN MODIFICATION AGREEMENT

(Providing for Fixed Interest Rate)

This Loan Modification Agreement ("Agreement"), made this 1st_ day of ___May___, 2012__, between _South Beech Development, LLC., a Kansas Limited Liability Company_ ("Borrower") and _The City of Wichita, 455 North Main,_ ("Lender"), amends and supplements a Promissory Note dated July 31, 1996, in the amount of \$195,000, for certain improvements to the real property described below:

_____230 N. Mosley, Wichita, Kansas 67202_____,
(Property Address)

legally described as follows:

That part of Lot 14 on Mosley Avenue, East Wichita, Sedgwick County, Kansas, described as beginning at the S.W. Corner of said Lot 14; thence north along the west line of said Lot 14, 80.11 feet; thence east to a point on the east line of said Lot 14, said point being 80.21 feet north of the S.E. Corner of said Lot 14; thence South 80.21 feet to the S.E. Corner of said Lot 14; thence west to the point of beginning. Commonly referred to as 230 North Mosley, Wichita, Kansas

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. As of ___May 1, 2012___, the amount payable under the Note and corresponding Security Instrument (the "Unpaid Principal Balance") is modified to U.S. \$195,000 (One hundred ninety-five thousand and no/100 dollars), consisting of the unpaid principal amount(s) loaned to Borrower.
2. Borrower promises to pay the Unpaid Principal Balance, in the amount of \$195,000 to the order of Lender. Interest will be charged on the Unpaid Principal Balance at the yearly rate of ___2.0%___%, beginning ___May 1, 2012___, Borrower promises to make monthly payments of principal and interest of U.S. \$_2,500___, beginning on the _1st_ day of ___January___, 2014__, and continuing thereafter on the same day of each succeeding month, in addition to a supplemental payment due February 15, of each year, during the term of this loan modification agreement, beginning February 15, 2015, to represent the difference between the net operating income earned by the rental housing and leased commercial space located at the above referenced property during the previous calendar year, and the payments remitted on the loan during that previous calendar year, until principal and interest are paid in full, with Net Operating Income defined as follows for purposes of this agreement:

Total Revenues
Less: Total General and Administrative Expenses
Less: Total Payroll
Less: Total Repairs and Maintenance
Less: Total Utilities and Security Expense
Less: First Mortgage Debt Service
Net Operating Income

The yearly rate of 2.0% will remain in effect until principal and interest are paid in full. If on December 31, 2019 (the "Maturity Date"), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, Borrower will pay these amounts in full on the Maturity Date.

3. If all or any part of the Property or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by the Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by the Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.

4. Borrower also will comply with the amended HOME Regulatory Agreement, all other covenants, agreements, and requirements of the Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument.
5. Borrower understands and agrees that:
 - (a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Security Instrument shall also apply to default in the making of the modified payments hereunder.
 - (b) All covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect, except as herein modified, and none of the Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Lender's rights under or remedies on the Note and Security Instrument, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which Lender is presently entitled against any property or any other persons in any way obligated for, or liable on, the Note and Security Instrument are expressly reserved by Lender.
 - (c) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.
 - (d) All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.
 - (e) Borrower agrees to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by Lender, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower.

Carl Brewer, Mayor
City of Wichita

Philip L. Perry, Manager
South Beech Development, LLC, a Kansas
Limited Liability Company

ATTEST:

Karen Sublett, City Clerk

State of _____)
 _____) ss
 _____ County)

BE IT REMEMBERED That on this ____ day of _____, 2012, before me, the undersigned, a notary public in and for the County and State aforesaid, came Phillip L. Perry, Manager of South Beech Development, LLC., a Kansas Limited Liability Company who is personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My Appointment Expires _____

Notary Public

Seal

State of Kansas)
)ss
Sedgwick County)

BE IT REMEMBERED That on this ____ day of _____, 2012, before me, the undersigned, a notary public in and for the County and State aforesaid, came Carl Brewer, Mayor, and Karen Sublett, City Clerk, of the City of Wichita who is personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My Appointment Expires _____

Notary Public

Seal

Approved As To Form,
Gary E. Rebenstorff, Director of Law

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Resolution considering an amendment to the K-96 Greenwich STAR Bond District Plan (District II)

INITIATED BY: Urban Development Office

AGENDA: New Business

Recommendation: Adopt the resolution setting a public hearing for consideration of an amendment of the K-96 Greenwich STAR Bond District Plan.

Background: On February 14, 2012, the City Council held a public hearing and approved the establishment of the K-96 Greenwich STAR Bond District. On March 6, 2012, the District was adopted following notification from the State Secretary of Commerce approving adoption of a STAR Bond District.

The Ordinance establishing the District included a District Plan which provides a description of the area within the district and the possible uses of STAR District financing. The District Plan identified most but not all of the eligible expenses that are intended to be used in the District. An amendment to the District Plan is needed in order to include all eligible expenses within the STAR Bond District. Amendment of the District Plan requires holding a new public hearing at a time and place set by resolution by the City Council.

Analysis: The STAR Bond statute requires a District Plan which identifies the property within the district and describes in a general manner all of the buildings, facilities and improvements in each that area proposed to be constructed or improved in each STAR Bond project area. The District Plan approved by the City Council identifies all eligible expenses be paid for by STAR bond financing, except for the cost of developing the multisport athletic complex.

Bond Counsel has determined that by listing certain eligible expenses in the District Plan, the City is therefor limited to only the eligible expenses identified. In order for the City to fully utilize STAR financing for its intended purpose within the K-96 Greenwich STAR Bond District, the District Plan must be amended to include language to permit the additional intended uses.

Financial Considerations: The publication and mailing costs associated with amending the STAR bond district will be paid from the Economic Development Fund and later will be transferred to the STAR bond project account if the STAR bond project is approved. Any STAR bonds issued for this project will be special obligation bonds of the City, payable solely from the incremental sales tax revenue remitted by the Kansas Department of Revenue for payment of the bonds. All eligible costs of the City relating to the project will be reimbursed with STAR bond proceeds.

Goal Impact: The City Council's goals for Economic Vitality and Affordable Living and Quality of Life are advanced through the use of STAR bonds to partner with developers to create a major commercial, entertainment and tourism site that will bring significant economic value to the City, enhance the

satisfaction of residents and improve Wichita's competitive position as a desirable place to live and work. The goal of Efficient Infrastructure is served by the completion of the K-96 and Greenwich Road freeway interchange.

Legal Considerations: The attached resolution setting a public hearing on June 5, 2012 for consideration of an amendment to the proposed STAR Bond Project District has been approved as to form by the Law Department. By law, the Board of County Commissioners and the Board of Education will have thirty days from the closing of the public hearing to make a finding that the proposed STAR bond project will have an adverse impact on county or school district property taxes and thereby require repeal of the STAR bond district. Re-approval of the district by the Secretary of Commerce is not required.

Recommendations/Actions: It is recommended that the City Council adopt the resolution which provides notice of consideration of an amendment to the K-96 Greenwich STAR bond district and sets a public hearing for June 5, 2012.

Attachments: Resolution with Exhibits

OCA

Resolution No.

A RESOLUTION STATING THE CITY OF WICHITA IS CONSIDERING AN AMENDMENT OF A STAR BOND DISTRICT PLAN FOR THE K-96 GREENWICH STAR BOND PROJECT DISTRICT UNDER AUTHORITY OF K.S.A. 12-17, 160 ET SEQ.

WHEREAS, BY Ordinance No 49-208, passed March 6, 2012 and published March 9, 2012, the City of Wichita (the "City") established a STAR bond project district pursuant to the provisions of K.S.A. 12-17, *et seq.*, as amended (the "Act"), known as the K-96 Greenwich STAR Bond Project District; and

WHEREAS, the City, by Resolution 12-006 adopted January 10, 2012, adopted a STAR bond district plan which identifies proposed project areas along with a general description of the buildings, facilities, and improvements that are proposed to be constructed or improved (the District Plan); and

WHEREAS, the City wishes to amend the District Plan to include the ability to fund the cost of developing a multisport athletic complex.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

Section 1. That the City is considering an amendment to the District Plan for the K-96 Greenwich STAR Bond Project District.

Section 2. That the City will hold a public hearing to consider the amendment of such STAR bond project district plan on June 5, 2012, at 9:30 a.m., or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

Section 3. That the amended STAR bond project district plan identifying proposed project areas along with a general description of the buildings, facilities, and improvements that are proposed to be constructed or improved in the STAR bond project district is attached hereto as **Exhibit C** and incorporated herein by reference.

Section 4. The governing body will consider making findings and taking action necessary for the amendment of the District Plan at the public hearing set to be heard herein.

Section 5. A copy of the proposed amended District Plan is available for inspection during the regular office hours in the office of the City Clerk, City Hall, 13th Floor, 455 N. Main, Wichita, Kansas.

Section 6. That the Governing Body will consider making findings necessary for an amendment of the STAR bond project district plan following the public hearing set to be heard herein.

Section 7. That a copy of this resolution shall be sent by certified mail, return receipt requested to the Sedgwick County Board of County Commissioners, and to the Board of Education of Unified School District Nos. 265 and 375. Copies of this resolution shall also be mailed by certified mail, return receipt requested, to each owner and occupant of land within the proposed STAR bond project district not more than ten (10) days following the date of the adoption of this resolution.

Section 8. That this resolution shall be published once in the official City newspaper not less than one week or more than two weeks preceding the date fixed for the public hearing.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas, this ____ day of _____, 2012.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

Approved as to Form:

Gary E. Rebenstorf, City Attorney

Exhibit “C:”

**STAR BOND PROJECT DISTRICT PLAN
FOR THE DEVELOPMENT OF THE
K-96 GREENWICH STAR BOND DISTRICT**

May 1, 2012

SECTION 1: PURPOSE

A STAR bond project district plan is required for inclusion in the establishment of a STAR bond district under K.S.A. 12-17,165. The district plan is a preliminary plan that identifies proposed STAR bond project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

SECTION 2: DESCRIPTION OF SALES TAX AND REVENUE BOND INCOME

STAR bond financing allows the Kansas Department of Revenue to measure and capture the incremental increase in state and local sales tax revenue collected within an approved STAR bond district and remit a portion of said revenue to the city or county in which the STAR bond district is located, to pay the principal and interest on STAR bonds issued to finance certain eligible costs associated with an approved STAR bond project. Projects financed through STAR bond financing include major commercial entertainment and tourism developments that create a significant “increment” in state and local sales tax income. The increment is determined by subtracting the total amount of sales tax revenue collected within the boundaries of a STAR bond project district during the 12 months preceding the establishment of the STAR bond project district from the total sales tax revenue collected in the district in each 12 month period following the approval of the STAR bond project during the term of the STAR bond project. The portion of the sales tax increment paid to the City is net of a small administrative fee assessed by the Department of Revenue.

In Wichita, the one-cent local option sales tax is assessed by Sedgwick County and a major portion of the revenue is distributed by the County to the City of Wichita, based on population and other fiscal considerations. By City ordinance, 50% the local sales tax revenue received by the City is dedicated to paying for streets, roads and bridges and is pledged to the repayment of City bonds issued for that purpose. The other 50% is dedicated to property tax abatement, and only that portion of the local sales tax increment collected in the STAR bond project district can be used to pay the principal and interest on STAR bonds.

SECTION 3: BUILDINGS AND FACILITIES

The proposed STAR bond project district, whose boundaries are set forth in Exhibits “A” and “B” attached hereto, is an area that meets the criteria for designation as a “major commercial entertainment and tourism area, including a major multi-sport athletic complex” as defined by state law governing the establishment and financing of STAR bond project districts. Property located within a major commercial entertainment and tourism area is legally eligible for establishment of a STAR bond project district.

The buildings and facilities to be constructed or improved in the STAR Bond project district may

be described in a general manner as a mixed-use development consisting of some or all of the following uses: major multi-sport athletic complex; destination attractions; retail uses; restaurant uses; other general commercial development; hotel uses; a public highway interchange; and associated public and private infrastructure.

SECTION 4: PROJECT AREAS AND ELIGIBLE PROJECT COSTS

It is anticipated that multiple STAR Bond Project Areas will be determined for the district under the STAR Bond project plan, which must be adopted by the City Council by a 2/3 majority vote before the expenditure of any funds to be financed with STAR bonds.

STAR bond financing may be used to pay for the purchase of real estate and site preparation including the demolition of structures and utility relocations, as well as on public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, public plazas, and multi-sport athletic complex and any other items permitted to be financed by statute.

SECTION 5: CONCLUSION

After the establishment of the STAR bond project district, any projects to be funded with STAR bond financing will be presented to the City Council for approval through the adoption of a STAR Bond Project Plan. The Project Plan will identify the specific project area located within the established STAR bond project district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out-weigh the costs. The Project Plan must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following further notification of property owners and occupants, before it can be adopted by a two-thirds majority vote of the City Council. Following approval by the City Council, the Project Plan must be approved by the Kansas Secretary of Commerce. Only then can STAR bond proceeds be spent on the approved projects.

STAR bond financing does not impose any additional taxes on sales or on property located within the STAR bond project district.

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and Council

SUBJECT: Emergency Response to Wichita Tornado 2012 (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Adopt the resolution and ordinance.

Background: On April 14, 2012, parts of the City of Wichita suffered significant damage due to a tornado.

Analysis: The tornado that struck the City of Wichita will require staff to focus on clean up and debris removal efforts, as well as maintaining public safety efforts in the affected areas. These costs require the creation of a project account. This will ensure that costs are appropriately identified and tracked. In addition, the bonding resolution will provide flexibility to finance cleanup costs, as necessary.

If the area is declared a federal disaster area, Federal Emergency Management Agency (FEMA) funding will eventually be provided to the City. Before any potential reimbursement is received, the City will need to aggregate and track relevant costs (using the project account). In addition, based on FEMA and State of Kansas Division of Emergency Preparedness rules, the City Manager will be required to designate a staff member as an “authorized representative” to interface with FEMA and Division of Emergency Preparedness (DEP) staff during any reimbursement process.

Financial Considerations: The response to the tornado will increase City expenditures. If a disaster area is declared, it is anticipated that many of these expenditures will be eligible for FEMA reimbursement, usually at a rate of 85%. At this point, an exact estimate of projected expenditures is not available. When the project is closed out, the transfer of funds from the General Fund may be required to balance the project account.

Goal Impact: This item impacts the Safe and Secure Community Goal by addressing the emergency needs of the City and its citizens.

Legal Considerations: The Law Department has approved the resolution and ordinance as to form.

Recommendations/Actions: It is recommended that the City Council approve the project, the bonding ordinance, any necessary budget adjustments, the resolution outlining disaster cleanup procedures, and find and declare, upon request of the Mayor, that a public emergency exists, requiring final passage of the bonding ordinance on the date of its introduction.

Attachments: Map, Resolution – Disaster Cleanup and Financing, Ordinance, and Request for Declaration of Emergency.

RESOLUTION NO. 12-089

WHEREAS, the April 14, 2012 Tornado caused significant damage throughout the City of Wichita, primarily in Southeast Wichita; therefore it is necessary to undertake emergency measures and implement a debris removal plan to assist the most severely affected citizens and neighborhoods and public infrastructure, and

WHEREAS, there are several City departments taking extraordinary measures to assist storm victims, clean-up damaged areas, open roads, and restore public services to those affected by the storm and such emergency measures may require contracting for debris removal, purchase of tools and equipment, and payment of overtime to City staff, and

WHEREAS, it is necessary that a project account be established to isolate costs associated with such emergency response and debris removal efforts, and

WHEREAS, to the extent possible, emergency response costs will be absorbed within the respective departments' budgets, reflected in the project and offset by a transfer from the department's budget; however, there are costs, including temporary help, contracted debris removal from local vendors, and equipment rental/purchases that cannot be absorbed, and

WHEREAS, much of the City's expenses for matters such as overtime and non-personnel expenses may potentially be reimbursed, making it necessary to isolate costs in a project, to enable the City to report costs, if eligible for reimbursement from the Federal Emergency Management Agency (FEMA), and

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA THAT:

1. The Governing Body of the City of Wichita hereby authorizes the implementation of the emergency response and debris removal plan caused by the April 14, 2012 Tornado.
2. The Governing Body of the City of Wichita hereby approves the establishment of such project and project budget.
3. The Governing Body of the City of Wichita hereby authorizes the City Manager to use the "public exigency" provisions of the City's purchasing ordinance and designated emergency management functions to expedite the acquisition of contractual services, equipment and supplies as necessary to address the damage caused by the emergency.
4. The Governing Body hereby authorizes the use of general funds for expenses that cannot be absorbed in departmental budgets and approves necessary budget adjustments.
5. If necessary, the Governing Body hereby authorizes the City Manager to appoint staff to serve as an "authorized representative", as required by the State of Kansas Division of Emergency Preparedness, and authorizes the designated staff to sign forms necessary to secure FEMA reimbursement, including a required form in which the City agrees to indemnify and hold harmless the United States and the State of Kansas in the event of claims arising from the removal of debris of wreckage from the disaster.

6. The Governing Body hereby authorizes the transfer of funds from the General Fund to the project account in the amount necessary to fund any expenditures that are not reimbursed by other agencies or not debt financed.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on May 1, 2012.

(Seal)

Carl Brewer, Mayor

ATTEST:

By _____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 49-265

AN ORDINANCE AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR CLEANUP COSTS ASSOCIATED WITH THE APRIL 14TH, 2012 TORNADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

Labor, Material, Equipment and other costs associated with cleanup and recovery efforts caused by the April 14, 2012 Tornado that affected parts of the City of Wichita.

SECTION 2: That the cost of said public improvements shall be paid by the issuance and sale of general obligation bonds by the City of Wichita at large, in the manner provided by law and under the authority of Article 12, Section 5 of the Kansas Constitution and/or City of Wichita Charter Ordinance No. 156. The total cost is estimated not to exceed \$2,000,000, exclusive of the costs of interest on borrowed money.

SECTION 3: That the advisability of said improvements is established as authorized by Article 12, Section 5 of the Kansas Constitution and/or City of Wichita Charter Ordinance No. 156.

SECTION 4: That this Ordinance shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, May 1, 2012, of an ordinance entitled:

" AN ORDINANCE AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR CLEANUP COSTS ASSOCIATED WITH THE APRIL 14TH, 2012 TORNADO "

The general nature of such emergency is to enable the City to immediately establish a project and initiate Home Rule financing authority for expenditures incurred in clean up and debris removal, as well as maintenance of public safety, in the areas of the City damaged by the April 14, 2012 tornado.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on this 1st day of May, 2012.

(Seal)
ATTEST:

CARL BREWER, Mayor

KAREN SUBLETT, City Clerk

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Amendments to Chapter 3.94 of the City Code relating to Farmers Markets
Approval of Changes to Wichita Farmers Market Vendors Assoc, LLC
Lease Agreement

INITIATED BY: Arts and Cultural Services Division

AGENDA: New Business

Recommendation: Place ordinance on first reading and approve the lease agreement.

Background: In 2006, Chapter 3.94 of the City Code was created to define and regulate organized farmers markets through the City's licensing process. In May 2004, the City entered into a lease agreement with the Wichita Farmers Market Vendors Assoc, LLC, located on City-owned property (known as the Old Town Farm and Art Market at First between Mosley and Rock Island Streets). Over the past two years, it has been determined that for organized farmer's markets located on city-owned property, certain aspects of the operation thereof would be more efficiently regulated through a lease agreement, rather than by ordinance, requiring minor changes to certain provisions of both the lease agreement and the farmer's market license ordinance.

Since 2004, the Farmers Market Vendors Association, LLC has paid \$150 per approximately 25 Saturdays per year for use of the property. At the request of the Farmers Market Vendors Assoc, LLC staff looked at the possible reduction of the standard event fee and determined a discount would be applicable to the event due to the duration of the market and the number of uses per year.

Analysis: The City Code currently provides that an organized farmer's market license may be a "blanket" license that includes all participating vendors that would otherwise be required to obtain individual transient merchant licenses. However, Section 3.94.060 currently requires that individual vendors must still submit transient merchant license applications. For farmer's markets that operate upon City-owned property pursuant to a lease or management agreement, it was determined that the regulatory aspect of the transient merchant license could be met and maintained through such agreements.

Accordingly, the proposed changes to both the ordinance and the lease agreement with the Wichita Farmers Market Vendors Assoc, LLC have been prepared for Council approval in an effort to streamline the market operation. In addition, an amendment is proposed to Section 3.94.100 that allows revocation of the farmer's market license for any lease violation.

Financial Considerations: Due to minimal expenses, the reduction in rates will still allow the City to maintain a positive balance.

Goal Impact: Enhance the Quality of Life by allowing less burdensome rules of operation for farmer's markets upon City-owned property.

Legal Consideration: The Law Department has reviewed and approved the proposed ordinance amendment and the lease agreement as to form.

Recommendations/Action: It is recommended that the City Council place the ordinance on first reading and approve the lease agreement.

Attachments: Proposed ordinance amendment
Lease Agreement

First Published in The Wichita Eagle on _____

04/12/12

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3.94.060, 3.94.100 AND 3.94.130 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ORGANIZED FARMERS MARKETS AND THE LICENSING THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.94.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

License application. A farmer's market operator shall obtain a license through the City Treasurer's office. A license may be issued only upon the completion of a license application that shall be on a form provided by the City Treasurer. A separate farmer's market license is required for each location at which a farmer's market is held or conducted. The farmer's market application shall contain the following information:

- (a) Name, date of birth and contact information of the market operator and applicant;
- (b) The name and permanent address of the market operator making application, and, if the market operator is not an individual, the names and addresses of the officers of the corporation or members of the partnership, association, or other entity, as the case may be;
- (c) If the market operator is a corporation, the name and permanent address of the market operator's registered agent or office;
- (d) Proof of a current sales tax license from the State of Kansas for the market operator and all transient merchant vendors, or proof of exempt status from state sales tax;

- (e) Address of the location where the market operator intends to operate the farmer's market;
- (f) A brief description and/or listing of the name and nature of the type of business to be conducted and the types and mix of vendors who will participate in the farmer's market activities;
- (g) Completed information regarding any and all participating vendors that qualify as "transient merchants" under Chapter 3.95 of the Code of the City of Wichita. Such transient merchant information must be submitted on a form and in detail as required by the City and as provided in the farmer's market license application. If any transient merchant vendor not included as part of the originally submitted and approved farmer's market license application subsequently participate in a licensed farmer's market, the market operator shall immediately provide the City required information for the vendor or vendors, or shall direct the transient merchant vendor or vendors to obtain required City transient merchant license or licenses. "Transient merchants" who participate in a farmer's market may separately apply for their own license with the City of Wichita if they are not included as part of the farmer's market license application. However, any participating "transient merchant" shall be licensed under either the farmer's market license or under their own separately-obtained "transient merchant" license;
- (h) The specific date(s) and times for which the right to operate the farmer's market is desired;
- (i) A sketch or drawing of the proposed farmer's market site showing the approximate dimensions of the area being used, the proximity to buildings, parking lots, rights-of-way or other such areas, and a description of any structure, implement, stand, display

- prop, or other such items used for the farmer's market, including signs, banners or other attention getting devices;
- (j) The name, address, telephone number and written permission of the owner, or tenant in possession of the location described in the application, upon which the applicant intends to conduct the farmer's market operation and activities;
 - (k) A statement as to whether or not the market operator and applicant has within two years prior to the date of the application been convicted of any felony; and
 - (l) A signed statement from the market operator and applicant indicating that all of the information provided is true and correct.

The requirements of subsection (d) pertaining to providing proof of sales tax license information from the State of Kansas for all vendors and all requirements of subsection (g) shall not apply to any farmer's market operator operating upon City owned property pursuant to a lease or management agreement with the City. Any such market operator shall provide completed information regarding any and all participating vendors as required by the lease or management agreement with the City.

SECTION 2. Section 3.94.100 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Revocation of license. (a) The Superintendent of Central Inspection may revoke any license issued under this chapter, for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the application for license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.

(3) Any violation of the provisions of this chapter.

(4) Any violation of Chapter 7.41 of the City Code, pertaining to the prohibition of loud and unnecessary noise.

(5) Any violation of the provisions of any lease or management agreement with the City of Wichita.

(b) The superintendent of central inspection shall notify the licensee of the revocation of his or her license in writing, setting forth the grounds for revocation, which shall be hand delivered to the licensee, or mailed to the licensee's permanent address appearing on the application. Upon five days' written notice to the person holding any license issued under the provisions of this chapter the Superintendent of Central Inspection shall have authority to revoke the license.

(c) Any person aggrieved by the revocation of a license as provided in this chapter shall have the right of appeal to the city council as set forth in Section 3.94.120(b).

SECTION 3. Section 3.94.130 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

Enforcement. In addition to all law enforcement officers of the city, the Superintendent of Central Inspection and all deputies under his or her supervision, and all health officers who are authorized representatives of the Director of the Division of Environmental Services shall have the power to enforce the provisions of this chapter.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

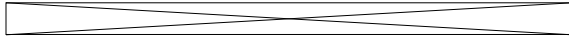
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law



First Published in The Wichita Eagle on _____

DELINEATED

04/12/12

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3.94.060, 3.94.100 AND 3.94.130 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ORGANIZED FARMERS MARKETS AND THE LICENSING THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.94.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

License application. A farmer's market operator shall obtain a license through the City Treasurer's office. A license may be issued only upon the completion of a license application that shall be on a form provided by the City Treasurer. A separate farmer's market license is required for each location at which a farmer's market is held or conducted. The farmer's market application shall contain the following information:

- (a) Name, date of birth and contact information of the market operator and applicant;
- (b) The name and permanent address of the market operator making application, and, if the market operator is not an individual, the names and addresses of the officers of the corporation or members of the partnership, association, or other entity, as the case may be;
- (c) If the market operator is a corporation, the name and permanent address of the market operator's registered agent or office;
- (d) Proof of a current sales tax license from the State of Kansas for the market operator and all transient merchant vendors, or proof of exempt status from state sales tax;

- (e) Address of the location where the market operator intends to operate the farmer's market;
- (f) A brief description and/or listing of the name and nature of the type of business to be conducted and the types and mix of vendors who will participate in the farmer's market activities;
- (g) Completed information regarding any and all participating vendors that qualify as "transient merchants" under Chapter 3.95 of the Code of the City of Wichita. Such transient merchant information must be submitted on a form and in detail as required by the City and as provided in the farmer's market license application. If any transient merchant vendor not included as part of the originally submitted and approved farmer's market license application subsequently participate in a licensed farmer's market, the market operator shall immediately provide the City required information for the vendor or vendors, or shall direct the transient merchant vendor or vendors to obtain required City transient merchant license or licenses. "Transient merchants" who participate in a farmer's market may separately apply for their own license with the City of Wichita if they are not included as part of the farmer's market license application. However, any participating "transient merchant" shall be licensed under either the farmer's market license or under their own separately-obtained "transient merchant" license;
- (h) The specific date(s) and times for which the right to operate the farmer's market is desired;
- (i) A sketch or drawing of the proposed farmer's market site showing the approximate dimensions of the area being used, the proximity to buildings, parking lots, rights-of-way or other such areas, and a description of any structure, implement, stand, display

- prop, or other such items used for the farmer's market, including signs, banners or other attention getting devices;
- (j) The name, address, telephone number and written permission of the owner, or tenant in possession of the location described in the application, upon which the applicant intends to conduct the farmer's market operation and activities;
- (k) A statement as to whether or not the market operator and applicant has within two years prior to the date of the application been convicted of any felony; and
- (l) A signed statement from the market operator and applicant indicating that all of the information provided is true and correct.

The requirements of subsection (d) pertaining to providing proof of sales tax license information from the State of Kansas for all vendors and all requirements of subsection (g) shall not apply to any farmer's market operator operating upon City owned property pursuant to a lease or management agreement with the City. Any such market operator shall provide completed information regarding any and all participating vendors as required by the lease or management agreement with the City.

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- (1) Fraud, misrepresentation or false statement contained in the application for license.
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business.

(3) Any violation of the provisions of this chapter.

(4) Any violation of Chapter 7.41 of the City Code, pertaining to the prohibition of loud and unnecessary noise.

(5) Any violation of the provisions of any lease or management agreement with the City of Wichita.

(b) The superintendent of central inspection shall notify the licensee of the revocation of his or her license in writing, setting forth the grounds for revocation, which shall be hand delivered to the licensee, or mailed to the licensee's permanent address appearing on the application. Upon five days' written notice to the person holding any license issued under the provisions of this chapter the ~~Director~~ Superintendent of Central Inspection shall have authority to revoke the license.

(c) Any person aggrieved by the revocation of a license as provided in this chapter shall have the right of appeal to the city council as set forth in Section 3.94.120(b).

SECTION 3. Section 3.94.130 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

Enforcement. In addition to all law enforcement officers of the city, the Superintendent of Central Inspection and all deputies under his or her supervision, and all health officers who are authorized representatives of the Director of the Division of Environmental Services ~~Department~~ shall have the power to enforce the provisions of this chapter.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law



LEASE AGREEMENT

This Agreement is made and entered into this 12 day of April, 2012.

BY AND BETWEEN

City of Wichita, Kansas,
a municipal corporation,
455 N. Main Street
Wichita, Kansas 67202

"LESSOR,"

AND

Wichita Farmers Market Vendors Assoc, LLC
PO Box 49043
Wichita, KS 67201-9043

Wichita, Kansas

"LESSEE"

WITNESSETH THAT:

WHEREAS, Lessor owns and operates the Old Town Plaza available for rentals to the general public for use under rules that are uniformly applied, and the Lessor has determined a farm and art market is a use consistent with and valuable to the City's intended developmental goals, and

WHEREAS, Lessee has been organized for the purpose of promoting, creating, and maintaining an attractive and viable market on the available Lessor's plaza property, and

WHEREAS, to further its purpose, Lessee wishes to enter into a long term lease to operate the plaza for limited, designated days during the growing season and operate a public market located in the heart of the Old Town District.

WHEREAS, LESSOR is the owner of the following described real property, and in consideration of rents to be paid and the covenants to be observed as set forth below, leases and rents to LESSEE, for the term and under the conditions set forth below, the premises (Plaza) described as follows, to-wit: 150 N. Mosley, Wichita, KS 67202, as more specifically designated on Exhibit A, attached.

WHEREAS, the above named parties desire to enter into this Lease Agreement to accomplish these purposes;

NOW, THEREFORE, in consideration of the premises and rent provided and the mutual covenants and agreements recited herein, the above named parties do hereby agree and shall be bound as follows:

1. **TERM.** LESSOR hereby leases the Plaza together with the improvements thereon, to LESSEE for an initial term to commence with May 5, 2012 and ending on October 20, 2012. During this term, LESSEE shall have the exclusive right to use the Plaza each Saturday, for the time period commencing at 4:30 am and continuing until 1:00 pm. LESSEE agrees to vacate the Plaza on or before 1:00 pm each Saturday of the term, in order to allow any other usage allowed by LESSOR, except for those Saturdays following Labor Day, when the time to vacate the Plaza shall be extended until 2:00 p.m.

2. **RENEWAL OPTIONS.** With forty-five (45) days' prior written approval of the LESSOR, this lease may continue at LESSEE's option for up to five (5) additional renewals that cover the growing season for the calendar year for which the extension is sought, subject to the renegotiation of the lease rate as indicated in section 3 below. LESSEE must give notice of its intention to exercise this option by delivery of a written notice to the LESSOR not less than sixty (60) days prior to the end of the current lease term.

3. **RENT.** As part consideration for this lease agreement and as rent for the use of said premises the LESSEE agrees to pay in advance to LESSOR the discounted sum of eighty five dollars (\$85) per scheduled Saturday within the leasehold term. This sum constitutes a reduction over the term of one thousand five hundred dollars (\$1,500). Rent for the term of each renewal option, if exercised, shall be separately negotiated before possession for that term commences. All payments shall be made in advance by check and shall be made payable to the order of the: City of Wichita, Kansas and shall be mailed or hand delivered to the Office of Arts and Cultural Services, 334 N. Mead, Wichita, 67202, unless such address is changed as LESSOR may specify from time to time by written notice delivered as stated hereinafter. Rent may be paid ½ at the beginning of the season, and ½ at the midpoint of the season. The parties acknowledge that LESSEE will operate the Plaza using sub-contractors, and that LESSOR does not participate in any obligation between any subcontractor and LESSEE.

4. **AGENCY AUTHORITY.** The term LESSEE, whenever used in this document, includes Wichita Farmers Market Vendors Assoc., LLC and all acts undertaken by its officers, directors, agents, employees or subcontractors vested with actual or apparent authority. The obligations created by this lease under sections 5, 8, 10, 14, 15, 18, 21, 23 and 27 shall be binding on the patrons and subcontractors of Lessee, and shall be included in any binding agreement created with third parties by Lessee, including any rules of operation for the market operated on the Plaza.

5. **LIABILITY.** LESSEE acknowledges that LESSEE will examine the premises before executing this lease and acceptance of the space thereof will acknowledge that there is in and about said premises nothing apparently dangerous to life, limb, health, or property. LESSEE agrees to enter into possession of said premises in their current "as-is" condition. As this lease allows for non-exclusive use of the Plaza, this obligation is a continuing one, and operation on each separate Saturday shall constitute an acceptance of the Plaza's current condition as it exists on that date. Lessee will notify Lessor if it believes that hazardous conditions exist on the Plaza or its facilities.

LESSOR shall not be liable to LESSEE for any damage done to or loss of personal property or for damage or loss suffered by the business or occupation of LESSEE, any subcontractor or sub-lessee of LESSEE arising from any act or neglect of any subcontractor, sub-lessees, invitees, or other occupants of the Plaza, or of the employees, officers, members or other equity interest holders of LESSEE, or of the customer trade of LESSEE.

LESSEE agrees to indemnify LESSOR and hold LESSOR harmless from any loss, liability, damage, and for the cost and expense of investigating or defending any claim therefore occurring on or about the Plaza or arising in any way as a result of LESSEE's occupancy of the Plaza.

6. **TAXES -- REAL AND PERSONAL PROPERTY.** LESSEE shall be liable for all taxes levied against personal property, furniture, or fixtures placed by LESSEE in or on the Plaza. If any such taxes for which LESSEE is liable are levied or assessed against the LESSOR, or LESSOR's property, or if the assessed value of the LESSOR's property is increased by inclusion of such personal property of the LESSEE, the LESSEE shall pay all such taxes within twenty (20) days from the date of a demand notice from the LESSOR. In addition, LESSEE shall be responsible for payment of all ad valorem taxes levied against the property. LESSEE shall pay all such taxes within twenty (20) days from the date of a demand notice from the LESSOR.

7. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to any obligation in this lease at any time shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

8. **USE OF PREMISES.** The demised premises may be used and occupied only for the purposes set out in the attached Exhibit A and related uses unless prior written permission for other use is obtained from LESSOR. Hours of operation shall not be before 4:30 a.m. on each Saturday of occupancy. Hours of operation shall not be later than 1:00 p.m. on the same day of each occupancy. After Labor Day, occupancy is allowed until 2:00 p.m. Further, LESSEE shall not use, or permit said premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which said premises are hereby leased. LESSEE shall not commit, or suffer to be committed, any waste upon said premises and LESSEE further agrees not to connect the premises with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of LESSOR.

LESSEE shall neither use nor occupy the demised premises for any unlawful, or ultra hazardous business purpose or activity nor operate or conduct its business in a manner constituting a nuisance under City Code. Upon notice or discovery, LESSEE agrees to immediately take action and cease any activity or use in violation of this agreement.

9. **LESSEE'S INDEMNIFICATION AND NON-LIABILITY OF LESSOR.** LESSOR shall not be liable to LESSEE or to LESSEE's employees, sub-contractors, patrons, guests or visitors in or upon the leased premises for any damage to person or property caused or claimed to have been caused by the negligence of LESSEE, the LESSEE's agents, employees, subcontractors, guests or visitors.

LESSEE agrees to save and hold the LESSOR harmless of and from any claim arising with respect to any portion of the premises leased to LESSEE and occurring during the time periods covered by this Lease.

LESSOR shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war court order, requisition or order of governmental body or authority or other matter beyond the reasonable control of LESSOR, or for any damage or inconvenience which may arise through repair or alteration of any part of the premises, or failure to make repairs, or from any cause whatever except LESSOR's negligence.

10. **PUBLIC LIABILITY INSURANCE.** LESSEE agrees to carry public liability insurance on the premises during the term hereof, covering both LESSOR and LESSEE, with companies licensed to do business in the State of Kansas for limits of not less than \$500,000 for injury or death of any one person, \$500,000, for any one occurrence, \$500,000 property damage insurance, and contractual liability coverage recognizing this lease, and providing that LESSOR and LESSEE shall be given at least that written notice by such insurance company prior to cancellation, termination or change in such insurance as is provided to LESSOR under the terms of the policy. LESSEE shall, upon request by LESSOR, provide LESSOR with copies of all policies or certificates evidencing that such insurance is in full force and effect and stating the terms thereof. LESSEE shall also provide and keep in force other insurance in amounts that may from time to time be reasonably required by LESSOR against other insurable hazards as are commonly insured against for the type of business or activity that LESSEE will conduct on the premises.

11. **LESSOR'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of the LESSOR herein:

- a. To deliver the leased premises to the LESSEE, at commencement of the term and every Saturday of such term of this lease in "as-is" condition.
- b. To provide to LESSEE, contingent upon LESSEE's compliance with its covenants, duties and obligations herein, the right to the quiet and peaceful possession of said premises on the dates and times above proscribed for the full term of this lease.

12. **LESSEE'S COVENANTS.** In consideration of the foregoing, the LESSEE, its sub-lessees and sub-contractors hereby agree:

- a. To promptly pay the specified rent for the leased premises in the manner and at the times as herein provided to the LESSOR, its successors and assigns, or to its agent.
- b. To keep the Plaza, including plumbing, pipes, light poles, landscaping, benches and other fixtures belonging thereto in good repair, neat, clean, safe, and sanitary during the term of this lease, and to observe and comply with all governmental regulations governing said premises as to cleanliness, all without cost or expense to LESSOR.

- c. To insure that all required outside storage and refuse containers are placed so that they do not block the alley or impede traffic flow.
- d. To maintain and keep clear all drains and drain lines of all kinds in or upon the Plaza to their juncture of same with public sewer main.
- e. To maintain the security of the Plaza, and persons present on the Plaza, protecting against destruction, damage, theft, personal injury or other loss, all without cost or expense to LESSOR.
- f. To notify the LESSOR immediately of any major problem relative to the Plaza.
- g. Lessee agrees to provide Lessor notice on a weekly basis, one week in arrears, of the all current vendors during Lessee's times of Plaza occupancy, to include, name and address, driver's license number (with a copy of a current driver's license being preferred), along with each vendor's tax ID, and description of products sold.
- h. LESSEE agrees to hold harmless, defend and indemnify the City, its officials, employees and agents against any claim, and suit or other demand, for loss of any kind brought, or which could be brought by LESSEE, its officers, employees, and agents, subcontractors or sublessees, arising from or related to the premises condition or the operation or failure to operate of the structures, facilities, systems or equipment made part of the premises or brought onto the premises Lessee will notify Lessor if it believes that a hazardous condition exists on the Plaza or its facilities.

13. **IMPROVEMENTS AND ALTERATIONS.** LESSEE shall make no material changes or alteration in said leased premises unless it shall first have obtained LESSOR'S written consent thereto.

All improvements which are not fixtures and which are not specifically identified as belonging to LESSOR shall remain the property of LESSEE. At the termination of this agreement, the LESSEE shall have the option of removing all such fixtures and leasehold improvements belonging to him and restoring the premises to their original condition, less ordinary wear and tear; or with the consent of LESSOR may leave said fixtures and leasehold improvements in place. In the event that said fixtures and leasehold improvements are not removed within fifteen (15) days after the termination of this lease, LESSOR shall have the option of taking title to all said fixtures and leasehold improvements, immediately, or to have all or any part of such fixtures and leasehold improvements removed at LESSEE's sole expense.

14. **LIENS - REGULATIONS.** LESSEE shall not, during the term of this agreement, permit or suffer any lien or encumbrance to attach to the premises or any part thereof and shall indemnify and save harmless the LESSOR against the same. LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in force or which may be hereafter adopted by the City of Wichita, Kansas, in respect to the operation and maintenance of the premises described herein. Further, LESSEE shall comply with all laws and ordinances of the State of Kansas and the City of Wichita,

Kansas, which have been enacted by any state or local governing body.

15. **INSPECTION AND ENTRY.** It shall be lawful for LESSOR, its agents and representatives, during any time and day of occupancy under this Lease to enter into or upon said demised premises for the purpose of examining into the condition thereof, or to make such repairs and alteration as may be necessary for the safety and preservation of the said facility, but without any obligation to make repairs, or for any other lawful purpose. LESSOR will endeavor to make routine repairs at times and dates other than during LESSEE'S occupancy, but shall not be obligated to do so.

16. **OWNERSHIP REPRESENTATION.** Under no circumstances shall the LESSEE represent to any party that the LESSEE is the owner of the property covered by the lease or the agent or trustee of the LESSOR. LESSEE understands and agrees that no authorization to act for, on or in behalf of the LESSOR is granted to the LESSEE.

17. **REMOVAL OF PROPERTY AND EQUIPMENT.** LESSEE shall have the right to remove from the leased premises at any time during the periods of occupancy during the lease term any and all equipment placed therein and owned by LESSEE. If LESSOR has allowed by written consent property and equipment to be so permanently attached to the facility that removal thereof will leave said facility damaged or materially altered, removal shall only occur as allowed in the written consent document .

18. **NONDISCRIMINATION.** LESSEE agrees that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any way due to the rights granted LESSEE under this contract, whether due to consideration or treatment as a subcontractor, sublessee, customer or patron on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex or age. LESSEE will ensure that a similar provision is included in the agreements with subcontractors, sublessees, or the rules of the market, as appropriate to ensure compliance.

19. **ASSIGNMENT AND SUBLEASE.** It is agreed that this Lease Agreement, or any interest therein, shall not be assigned by the LESSEE, without the prior written consent of LESSOR, with such consent not to be unreasonably withheld. It is further agreed that LESSEE shall be allowed to sublet to third party merchants the ability to operate stalls, booths or other displays of produce and wares within the confines of specifically designated areas of the Plaza, and to provide to LESSOR a list of the same for every date for which the Plaza is occupied by LESSEE. This list shall contain the name, phone number, and tax identification number and copy of the driver's license or Kansas state issued identification card of each person who will have contact with the public on the Plaza in any representative capacity of LESSEE, or any of its subcontractors or sublessees. This lease nor any interest therein, shall not be sold or assigned or passed by adjudication of LESSEE as a bankrupt or through bankruptcy proceedings. In the event the lease is so assigned or the property sublet in whole or in part, the LESSEE is not relieved from any of its obligations and liabilities under this Lease Agreement, but rather, remains liable for performance under the Lease Agreement.

20. **DESTRUCTION.** In the event of the destruction or damage of the Plaza by fire,

windstorm, or other cause so as to render the premises untenable, this lease shall immediately terminate and cease unless LESSOR shall within ten (10) days thereafter notify LESSEE in writing of LESSOR'S desire to continue said lease, in which event said LESSOR shall be obligated to restore said facility in due and reasonable time to substantially its former condition except as to any property owned by LESSEE therein, and in that event the rent shall be abated until said leased premises are restored to condition for occupancy. Slight or partial damage by fire, windstorm, or other cause, which does not render the building substantially unfit for use and occupancy shall not affect the terms of this lease.

21. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under and breaches of this lease by LESSEE:

- a. Any failure of LESSEE to pay any rent installment hereby reserved and such failure shall continue for a period of twenty (20) days from the date such rent is due.
- b. Failure of LESSEE to perform or observe any of the terms, provisions, conditions and covenants of this lease, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to LESSEE.
- c. LESSEE shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of the LESSEE's property, or LESSEE makes an assignment for the benefit of creditors.
- d. If LESSEE abandons or vacates any substantial portion of the demised premises for a period of fourteen (14) calendar days or more, being two consecutive, scheduled dates of occupancy.
- e. Use of the property in violation of any City ordinance by Lessee or any sub-lessee or tenant.
- f. The premises come into the hands of any person other than is expressly permitted under this agreement during any period of LESSEE's lease.

22. **TERMINATION.** This agreement shall terminate without any further required notice upon occurrence of any of the following.

- a. The expiration of the lease term or any extension thereof.
- b. Any default or breach of any covenants and provisions of the Lease Agreement by the LESSEE and failure to cure such breach by LESSEE after written notice, in which case the LESSOR shall be entitled to possession of the leased premises without regard to LESSEE's scheduled future occupancy dates, and LESSOR may distrain for rent due and damages and recover possession of said leased premises as provided by law.

- c. Upon sixty (60) days after declaration by the LESSOR that the premises is needed for public purpose.

23. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore hereof, this lease agreement shall be, jointly and severally, binding on the parties hereto, their respective successors and assigns.

26. **NOTICE.** All LESSEE correspondence, notices and demands to LESSOR must be given in writing to:

City of Wichita, KS
Arts and Cultural Services
Attention: John D'Angelo
225 W. Douglas
Wichita, Kansas 67202

All LESSOR correspondence, notices and demands to LESSEE must be given in writing to:

Wichita Farmers Market Vendors Assoc, LLC
PO Box 49043
Wichita, KS 67201-9043

27. **EXHIBITS.** All of the exhibits referenced hereinabove are part of the Lease agreement as if fully set forth herein.

28. **CAPTIONS.** The captions contained in this lease are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this lease.

29. **SEVERABILITY.** If any clause or provision of this lease is determined to be illegal, invalid or unenforceable under present or future laws effective during the term of this lease, then and in that event, it is the intention of the parties hereto that the remainder of this lease shall not be affected thereby, and it is also the intention of the parties to this lease that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable, there be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

30. **AMENDMENTS; BINDING EFFECT.** This lease may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors, in interest and legal


representatives, except as otherwise herein expressly provided.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in duplicate the day and year first above written.

LESSOR
CITY OF WICHITA, KANSAS

LESSEE
Wichita Farmers Market Vendors Assoc, LLC

Carl Brewer, Mayor


By: Pat Randleas, Managing Member

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law

[Needs diagram of Plaza as Exhibit A]

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and City Council
SUBJECT: Approval of Certificate of Convenience and Necessity for Mitchell Weber d/b/a Tornado Transit LLC (Charter Limousine Service)
INITIATED BY: Finance Department
AGENDA: New Business

Recommendation: Approve a Certificate of Convenience and Necessity for Tornado Transit LLC.

Background: On March 19, 2012, the City of Wichita received an application from Mr. Mitchell Weber d/b/a Tornado Transit LLC, to operate a chartered limousine service in Wichita, Kansas. A requirement of the Charter Limousine license is a certificate of convenience and necessity. The application included support documentation, an insurance policy which satisfied code requirements, payment of fee, and information necessary for purpose of a police records check. Vehicles to be used under the authority of the licenses are inspected and permitted by Public Works & Utilities Fleet and Buildings Division. The City's Municipal Code for "Chartered Limousine Service" regulates only vehicles with a capacity of nine passengers or less. Larger capacity passenger vehicles are regulated by the Kansas Corporation Commission as part of its Motor Carrier regulatory responsibilities. Tornado Transit LLC currently operates only one vehicle that falls within the regulatory responsibility of the City's Code.

Analysis: If approved for a certificate, Tornado Transit LLC (Limousine Service) will become a licensed chartered limousine service in the City of Wichita. This will be an added resource to those persons wanting transportation services for special occasions.

Financial Consideration: There is no financial impact on the City of Wichita.

Goal Impact: The proposed program contributes to the City goal of Economic Vitality and Affordable Living.

Legal Consideration: The Law Department has reviewed and approved the Certificate of Convenience and Necessity and the policy of insurance submitted by Mitchell Weber d/b/a Tornado Transit LLC (Limousine Service) as to form.

Recommendation/Action: It is recommended that the City Council approve a Certificate of Convenience and Necessity for Mitchell Weber to operate Tornado Transit LLC (Limousine Service) including up to one vehicle in Wichita, Kansas.

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and Members of the City Council

SUBJECT: Water and Sewer Utility Revenue Bonds, Series 2012A

INITIATED BY: Finance Department

AGENDA: New Business

Recommendation: Approve the bid.

Background: The City is offering for sale one series of Water and Sewer Utility Revenue Bonds (Series 2012A) in an amount not to exceed \$17,710,000 for the purpose of providing permanent financing for capital improvement projects of the Utility.

Analysis: The estimated principal amount for the bonds is based on an amount necessary to primarily reimburse expenditures, pay for costs of issuance and provide funding for required bond reserves. The debt is structured in such a way that it allows for inter-generational equity by spreading a portion of the costs out to a total of 20 years, the typical term for utility debt.

Bids will be accepted electronically through **PARITY** Electronic Bid Submission System on May 1, 2012 until 10:00 a.m. CDT in the Finance Conference Room, at which time the bids will be publicly opened. No bids will be accepted after the 10:00 a.m. deadline. The bids will be verified, tabulated and presented to the City Council at its earliest convenience following the tabulation of the bids. By law, the City must award the sale of the bonds to the bidder whose proposed interest rates result in the lowest true interest cost.

Financial Considerations: The Series 2012A Bonds will mature serially over twenty years and will be paid from revenues collected by Public Works & Utilities. The Series 2012A Bonds will be callable on and after October 1, 2020 at par.

Goal Impact: The permanent financing of capital costs enhances the Efficient Infrastructure Goal through construction efforts providing reliable, compliant and secure utilities. The Internal Perspective Goal is also impacted as a result of the permanent financing of capital improvements and by offering these debt obligations through competitive sale.

Legal Considerations: The Law Department has approved the form of the ordinances and resolutions which have been prepared by Bond Counsel and, on the sale date, Bond Counsel reviews the bids for conformity to the bid conditions contained in the Official Notice of Sale and reports any irregularities in the bids to the Finance Department.

Recommendations/Actions: It is recommended that the City Council: (1) direct the opening and reading of the bids; (2) award the sale of the Bonds subject to approval of the final sizing terms of the Bonds by the City Manager, his designee or the Director of Finance; (3) adopt the Bond Ordinance and Resolution and authorize the publication of the Bond Ordinance; and (4) find and declare, upon request of the Mayor, that a public emergency exists, requiring the final passage of the Bond Ordinance on the date of introduction.

Page 2
May 1, 2012
Water and Sewer Utility Revenue Bonds, Series 2012A

Attachments: Bond Ordinance
Bond Resolution
Request for Declaration of Emergency

RESOLUTION NO. 12-090

OF

THE CITY OF WICHITA, KANSAS

ADOPTED MAY 1, 2012

PROVIDING FOR THE ISSUANCE OF

NOT TO EXCEED \$17,710,000

WATER AND SEWER UTILITY

REVENUE BONDS

SERIES 2012A

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RESOLUTION NO. 12-_____

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE TERMS OF THE CITY'S WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2012A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,710,000 PREVIOUSLY AUTHORIZED BY AN ORDINANCE OF THE CITY; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

WHEREAS, the Governing Body the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Series 2012A Bonds (as herein defined) in the aggregate principal amount of not to exceed \$17,710,000, payable from the Net Revenues (as herein defined) of the Utility (as herein defined); and

WHEREAS, the Bond Ordinance authorized the Governing Body of the City to adopt a resolution prescribing certain details and conditions and making certain covenants with respect to the issuance of the Series 2012A Bonds, the operation and maintenance of the Utility and the disposition of moneys deposited in the Water and Sewer Utility Revenue Fund (as herein defined);

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Resolution, the following words and terms as used in this Resolution shall have the following meanings:

"Act" shall mean the Constitution and Statutes of the State, including Article 12, Section 5, of the Constitution of the State, Charter Ordinance No. 211, K.S.A. 10-101 *et seq.*, and K.S.A. 10-1201 *et seq.*, all as amended and supplemented.

"Additional Bonds" shall mean any additional revenue bonds issued pursuant to and in accordance with Article IX hereof.

"Annual Budget" shall mean with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of this Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of Section 1004 of this Resolution.

“Authentication Date” shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on the Certificate of Authentication which is on the Bond.

“Authorized Investments” shall mean any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the City pursuant to the Bond Ordinance and this Resolution:

- (A) For all purposes, including as defeasance investments in refunding escrow accounts:
 - (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following paragraph (2)), or
 - (2) Direct non-callable obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America.
- (B) For all purposes other than defeasance investments in refunding escrow accounts:
 - (1) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:
 - Export - Import Bank
 - Farmers Home Administration
 - General Services Administration
 - U.S. Maritime Administration
 - Small Business Administration
 - Government National Mortgage Association (GNMA)
 - U.S. Department of Housing & Urban Development (PHA's)
 - Federal Housing Administration;
 - (2) bonds, notes or other evidences of indebtedness rated “AAA” by Standard & Poor’s Rating Services, a division of the McGraw-Hill Companies (“S&P”) and “Aaa” by Moody’s Investors Services, Inc. (“Moody’s”) issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;
 - (3) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association,

Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

- (4) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s, or any successors thereto; or (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;
- (5) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody’s or S&P;
- (6) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and
- (7) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

Provided, however, that after the defeasance of the Pre-2008 Bonds, Authorized Investments for all purposes other than defeasance investments in refunding escrow accounts shall include all investments permitted under the laws of the State.

- (C) The value of the above investments shall be determined as of the end of each month. (See the definition of “Value” herein).

“Bond Counsel” shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

“Bond Insurer” shall mean the issuer, if any, of a Municipal Bond Insurance Policy described on **Exhibit B** to this Resolution.

“Bond Ordinance” shall mean the ordinance of the City authorizing the issuance of the Series 2012A Bonds as further described on **Exhibit B** to this Resolution.

“Bond Registrar” shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

“Bond Reserve Account” shall mean the Water and Sewer Utility Bond Reserve Account initially created by the Series 1993 Ordinance.

“Bond Reserve Requirement” shall mean, collectively, the 1998 Bond Reserve Requirement as established by the Series 1998 Ordinance, the 2000 Bond Reserve Requirement as established by the Series 2000 Ordinance, the 2005A Bond Reserve Requirement as established by the Series 2005A Ordinance, the 2005B Bond Reserve Requirement as established by the Series 2005B Ordinance, the 2005C Bond Reserve Requirement as established by the Series 2005C Ordinance, the 2006 Bond Reserve Requirement as established by the Series 2006 Ordinance, the 2008A Bond Reserve Requirement as established by the Series 2008A Ordinance, the 2009A Bond Reserve Requirement as established by the Series 2009 Ordinance, the 2009B Bond Reserve Requirement as established by the Series 2009 Ordinance, the 2010A Bond Reserve Requirement and the 2010B Bond Reserve Requirement as established by the Series 2010 Ordinance, the 2011A Bond Reserve Requirement as established by the Series 2011A Ordinance and the 2012A Bond Reserve Requirement as established by this Resolution, and any bond reserve requirement established for any subsequent series of Parity Bonds.

“Bonds” shall mean the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2010A Bonds, the Series 2010B Bonds, the Series 2011 Bonds and the Series 2012A Bonds authorized by the Bond Ordinance and this Resolution, and any Additional Bonds issued pursuant to and in accordance with Article IX hereof.

“Business Day” shall mean a day which is not a Saturday, Sunday or a day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

“City” shall mean the City of Wichita, Kansas.

“City Clerk” shall mean the duly appointed and acting City Clerk of the City, or in the absence thereof, any duly appointed Deputy City Clerk or Acting City Clerk of the City.

“City Manager” shall mean the duly appointed and acting City Manager of the City, or in the absence thereof, any duly appointed Deputy, Assistant or Acting City Manager of the City.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with Regulations promulgated thereunder by the United States Department of the Treasury.

“Costs of Issuance” shall mean all costs of issuing the Series 2012A Bonds, and may include, but are not limited to, all publication, printing, signing and mailing expenses in connection therewith, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, accounting expenses incurred in connection with the determination of Yield or Rebate Amount, and all expenses incurred in connection with receiving ratings on the Series 2012A Bonds.

“Consulting Engineers” shall mean the engineer or engineering firm or corporation at the time employed under the provisions of Section 1005 of this Resolution.

“Current Expenses” shall mean, as applied to either component of the Utility, the City’s reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (i) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (ii) all administrative expenses, (iii) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (iv) insurance premiums, (v) engineering expenses relating to operation, repair and maintenance, (vi) legal expenses, (vii) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (viii) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (ix) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (x) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the City or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (xi) any other expenses required to be paid by the City under the provisions of this Resolution or by law. “Current Expenses” shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

“Date of Issuance” shall mean the date on which the Series 2012A Bonds are delivered to the Underwriter and the City receives from the Underwriter the full purchase price therefor.

“Dated Date” shall mean the dated date of the Bonds. The Dated Date of the Series 2012A Bonds is May 1, 2012.

“Debt Service” shall mean the scheduled amount of interest and maturing principal payable for that Bond year, as described in the Code.

“Debt Service Requirements” shall mean the required payments of the principal of, premium, if any, and the interest on the Bonds and any Policy Costs owing by the City, all in accordance with the terms and provisions of this Resolution or any Parity Bond Ordinance.

“Depreciation and Replacement Account” shall mean the Water and Sewer Utility Depreciation and Replacement Account initially created by the Series 1993 Ordinance.

“Direct Participants” shall have the meaning set forth in and defined by the Letter of Representations.

“Director of Finance” shall mean the duly appointed and acting Director of Finance of the City, or in the absence thereof, any duly appointed Deputy, Assistant or Acting Director of Finance of the City.

“DTC” shall mean The Depository Trust Company.

“Existing Bonds,” shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds, the Series 2009B Bonds, the Series 2010A Bonds, the Series 2010B Bonds and the Series 2011A Bonds.

“Fiscal Agent” shall mean the Bond Registrar and/or the Paying Agent.

“Fiscal Year” shall mean the Fiscal Year of the City, currently being the 12 months ending each December 31.

“Funds and Accounts” shall mean the Funds and Accounts created or ratified, continued and confirmed by Article V of this Resolution.

“Governing Body” shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

“Government Obligations” shall mean (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct non-callable obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

“Gross Revenues” shall mean all receipts and revenues, including interest earnings, but excluding non-cash capital contributions, derived by the City from the Utility.

“Indirect Participants” shall have the meaning set forth in and defined by the Letter of Representations.

“Interest Payment Date” shall mean any date on which interest on the Bonds is due and payable. The Interest Payment Dates for the Series 2012A Bonds are April 1 and October 1 of each year, commencing October 1, 2012, and ending on the final maturity date of the Series 2012A Bonds, or at such other time as the Series 2012A Bonds are paid or provision is made for the payment thereof.

“Letter of Representations” shall mean that certain Blanket Letter of Representations between the City and DTC.

“Mayor” shall mean the duly elected and acting Mayor of the City or, in the Mayor’s absence the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

“Municipal Bond Insurance Policy” shall mean, if applicable, the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Series 2012A Bonds when due as described on **Exhibit B** to this Resolution.

“Net Proceeds” shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

“Net Revenues” shall mean for any period the amount of the excess of Gross Revenues of the Utility including investment income deposited to the credit of the Revenue Fund, respectively, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding debt service payments, depreciation, amortization and capital expenditures for improvements to the Utility.

“Net Revenues Available for Debt Service” shall mean the Net Revenues.

“Operating Revenues” shall mean the Gross Revenues of the Utility less investment income and less costs and expenses of operation, maintenance and repair of the Utility.

“Original Proceeds” shall mean all proceeds, including accrued interest, derived from the sale of the Bonds.

“Outstanding” shall mean, as of a particular date, all Bonds theretofore issued, authenticated and delivered under the provisions of this Resolution or any Parity Bond Ordinance, except (i) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution or any Parity Bond Ordinance, (ii) Bonds for the payment or redemption of which moneys or investments have been deposited in accordance

with Article XIII of this Resolution or any Parity Bond Ordinance, and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution or any Parity Bond Ordinance.

“Owner(s)” or “Registered Owner(s)” shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

“Parity Bond Ordinance” shall mean, collectively, the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance, the Series 2011A Ordinance, the Bond Ordinance and this Resolution authorizing the Series 2012A Bonds, and any subsequent ordinance of the City authorizing the issuance of Parity Bonds.

“Parity Bonds” shall mean Additional Bonds issued pursuant to Section 902 of this Resolution.

“Participants” shall have the meaning set forth in and defined by the Letter of Representations.

“Paying Agent” shall mean the Treasurer of the State, Topeka, Kansas, its successors and assigns.

“Payment to the City” shall mean the payment to the City’s general fund as a payment for operation of the Utility. So long as any Series 1998 Bonds remain Outstanding, the amount of the annual Payment to the City shall be not more than five percent (5%) of the Gross Revenues of the Utility for the preceding year to the extent available after other obligations of the Utility have been met. At such time as the Series 1998 Bonds are no longer Outstanding, the amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility revenue bonds, subject to the approval of the provider of the bond insurance policy for the Series 1998 Bonds.

“Pre-2008 Bonds” shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds and the Series 2006 Bonds.

“Pre-2009 Bonds” shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds and the Series 2008A Bonds.

“Pre-2010 Bonds” shall mean, collectively, the Series 1998 Bonds, the Series 2000 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2009A Bonds and the Series 2009B Bonds.

“Principal and Interest Account” shall mean the Water and Sewer Utility Principal and Interest Account created by the Series 1993 Ordinance.

“Principal Payment Date” shall mean any date on which the principal of the Bonds is due and payable. The Principal Payment Dates for the Series 2012A Bonds are October 1 of each year, commencing October 1, 2013, and continuing annually thereafter until such time as the aggregate principal amount of the Series 2012A Bonds has been paid or provision is made for the payment thereof.

“Project Costs” shall mean, as applied to the Projects, any and all costs and expenses incurred in connection with the acquisition or construction of the Projects, and shall include, without intending thereby to limit or restrict any proper definition of such words under the provisions of the Act, the following:

- (A) Obligations incurred for labor and to contractors, builders and materialmen in connection with the construction of the Projects, for machinery and equipment, and for the restoration of property damaged or destroyed in connection with such construction;
- (B) Taxes or other municipal or governmental charges lawfully levied or assessed during construction upon the Projects or any property acquired therefor, and premiums on insurance (if any) in connection with the Projects during the construction thereof;
- (C) Fees and expenses of engineers, including the Consulting Engineers, for studies, surveys and estimates, engineering, and the preparation of plans and supervision of construction, as well as for the performance of all other duties of engineers in relation to the acquisition and construction of the Projects or the issuance of financing therefor;
- (D) Expenses of administration properly chargeable to the Projects, legal expenses and fees, financing charges, costs of audits and of preparing and issuing the Series 2012A Bonds, and all other items of expense not elsewhere in this definition specified but incident to the acquisition and construction of the Projects and the placing of the same in operation and to the acquisition of real estate, franchises and rights-of-way therefor, including abstracts of title and title insurance, and the financing thereof, including specifically the Costs of Issuance;
- (E) The costs of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of award or final judgment in or any settlement or compromise of any proceedings to acquire by condemnation, such property, lands, property rights, rights-of-way, franchises, easements and other interests in land as may be deemed necessary or convenient for the acquisition or construction of the Projects, or the operation thereof, options and partial payments thereon, and the amount of any damages incident to

or consequent upon the acquisition or construction of the Projects; and

- (F) Any obligation or expense heretofore or hereafter incurred by the City and any amounts heretofore or hereafter advanced by the City or by any agency of the State or the Federal Government for any of the foregoing purposes, specifically including the payment and retirement of any temporary financing which may have previously been issued for any individual Project.

“Project Funds,” for purposes of this Resolution, shall mean, collectively, the 2012A Sewer Projects Fund and the 2012A Water Projects Fund created by this Resolution.

“Projects,” for purposes of this Resolution, shall mean the constructions, reconstructions, alterations, repairs, improvements, extensions or enlargements of the Utility authorized and provided for by this Resolution and described on **Exhibit A** to this Resolution and any Substitute Project.

“Purchase Price” shall mean, with respect to the Series 2012A Bonds, the original purchase price for such series as described on **Exhibit C** to this Resolution.

“Rating Agency” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., the rating agency assigning a rating to the Series 2012A Bonds.

“Rebate Account” shall mean the Water and Sewer Utility Revenue Bonds, Series 2012A, Rebate Account created by this Resolution.

“Record Date” shall mean the fifteenth (15th) day of the month next preceding an Interest Payment Date.

“Registration Books” shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

“Resolution” shall mean this Resolution adopted by the Governing Body of the City on May 1, 2012, prescribing the terms and details of the Series 2012A Bonds.

“Revenue Fund” shall mean the City’s existing Water and Sewer Utility Revenue Fund.

“Series A, 1993 Bonds” shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series A, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of \$26,455,000, and dated February 1, 1993, none of which remain Outstanding.

“Series B, 1993 Bonds” shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series B, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of \$49,865,000, and dated February 1, 1993, none of which remain Outstanding.

“Series 1993 Bonds” shall mean, collectively, the City’s Series A, 1993 Bonds and Series B, 1993 Bonds.

“Series 1993 Ordinance” shall mean Ordinance No. 41-934 of the City, adopted January 26, 1993, which authorized issuance of the Series 1993 Bonds.

“Series 1998 Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 1998, authorized by the Series 1998 Ordinance, issued in the original principal amount of \$29,135,000, and dated September 1, 1998.

“Series 1998 Ordinance” shall mean Ordinance No. 43-954 of the City, adopted September 1, 1998, which authorized issuance of the Series 1998 Bonds.

“Series 2000 Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2000, authorized by the Series 2000 Bond Ordinance, issued in the original principal amount of \$7,220,000, and dated June 1, 2000.

“Series 2000 Ordinance” shall mean Ordinance No. 44-663 of the City, adopted June 13, 2000, which authorized issuance of the Series 2000 Bonds.

“Series 2005A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, authorized by the Series 2005A Ordinance, issued in the original principal amount of \$45,535,000 and dated the date of issuance thereof.

“Series 2005A Ordinance” shall mean, collectively, Ordinance No. 46-581 and Resolution No. 05-228 of the City, passed and adopted, respectively, on April 26, 2005, which authorized the issuance of the Series 2005A Bonds.

“Series 2005B Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, authorized by the Series 2005B Ordinance, issued in the original principal amount of \$26,695,000 and dated the date of issuance thereof.

“Series 2005B Ordinance” shall mean, collectively, Ordinance No. 46-634 and Resolution No. 05-406 of the City, passed and adopted, respectively, on August 2, 2005, which authorized the issuance of the Series 2005B Bonds.

“Series 2005C Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2005C, authorized by the Series 2005C Ordinance, issued in the original principal amount of \$46,975,000 and dated October 1, 2005.

“Series 2005C Ordinance” shall mean, collectively, Ordinance No. 46-670 and Resolution No. 05-502 of the City, passed and adopted, respectively, on October 4, 2005, which authorized the issuance of the Series 2005C Bonds.

“Series 2006 Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2006, authorized by the Series 2006 Ordinance, issued in the original principal amount of \$51,140,000 and dated December 1, 2006.

“Series 2006 Ordinance” shall mean, collectively, Ordinance No. 47-300 and Resolution No. 06-609 of the City, passed and adopted, respectively, on November 14, 2006, which authorized the issuance of the Series 2006 Bonds.

“Series 2008A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2008A, authorized by the Series 2008A Ordinance, issued in the original principal amount of \$29,460,000 and dated April 1, 2008.

“Series 2008A Ordinance” shall mean, collectively, Ordinance No. 47-866 and Resolution No. 08-170 of the City, passed and adopted, respectively, on April 1, 2008, which authorized the issuance of the Series 2008A Bonds.

“Series 2009 Bonds” shall mean, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

“Series 2009 Ordinance” shall mean, collectively, Ordinance No. 48-351 and Resolution No. 09-174 of the City, passed and adopted, respectively, on June 16, 2009, which authorized the issuance of the Series 2009 Bonds.

“Series 2009A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A, authorized by the Series 2009 Ordinance, issued in the original principal amount of \$119,775,000 and dated June 30, 2009.

“Series 2009B Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), authorized by the Series 2009 Ordinance, issued in the original principal amount of \$12,845,000 and dated June 30, 2009.

“Series 2010 Bonds” shall mean, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

“Series 2010 Ordinance” shall mean Ordinance No. 48-834 and Resolution No. 10-257 of the City, passed and adopted, respectively, on September 21, 2010, which authorized the issuance of the Series 2010 Bonds.

“Series 2010A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2010A, authorized by the Series 2010 Ordinance, issued in the original principal amount of \$31,810,000 and dated October 15, 2010.

“Series 2010B Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), authorized by the

Series 2010 Ordinance, issued the original principal amount of \$17,090,000 and dated October 15, 2010.

“Series 2011A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, authorized by the Series 2011A Ordinance, issued in the original principal amount of \$105,325,000 and dated November 17, 2011.

“Series 2011A Ordinance” shall mean, collectively, Ordinance No. 49-148 and Resolution No. 11-260 of the City, passed and adopted, respectively, on November 1, 2011, which authorized the issuance of the Series 2011A Bonds.

“Series 2012A Bonds” shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2012A, authorized by the Bond Ordinance and this Resolution, in the principal amount set forth on **Exhibit C** to this Resolution and dated the Dated Date.

“Sewer Utility” shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

“State” shall mean the State of Kansas.

“Substitute Project” shall mean the substitute or additional projects authorized pursuant to Section 603 of this Resolution.

“Tax Compliance Agreement” shall mean the Certificate Relating to Arbitrage and Related Tax Matters, executed by the City, dated as of and delivered on the Date of Issuance, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

“Term Bonds” shall mean the Term Bonds, if any, described on **Exhibit C** to this Resolution.

“Underwriter” shall mean the original purchaser of the Series 2012A Bonds as set forth on **Exhibit B** to this Resolution.

“Utility” shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

“Value,” for purposes of complying with the requirements of this Resolution shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

- (A) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*) -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;
- (B) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or in *The New York Times* -- the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and
- (C) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Provided, however, that when the Pre-2010 Bonds are no longer Outstanding, "Value" shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

"Water Utility" shall mean and include the waterworks system now owned and operated by the City and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

"2012A Bond Reserve Requirement" shall mean a sum equal to greater of the amount of interest which shall become due and payable on the Series 2012A Bonds during the next Fiscal Year (determined in each year) or the maximum amount of interest which shall become due and payable on the Series 2012A Bonds in any subsequent year, except that, in no event shall the amount of the 2012A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2012A Bonds (determined as of the date of issuance of the Series 2012A Bonds), the maximum annual principal and interest requirements on the Series 2012A Bonds (determined as of the date of issuance of the Series 2012A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2012A Bonds (determined as of the date of issuance of the Series 2012A Bonds).

"2012A Bond Reserve Subaccount" shall mean the Water and Sewer Utility Revenue Bonds, Series 2012A, Bond Reserve Subaccount created by this Resolution within the Bond Reserve Account.

"2012A Costs of Issuance Account" shall mean the Water and Sewer Utility Revenue Bonds, Series 2012A, Costs of Issuance Account created by this Resolution.

“2012A Principal and Interest Subaccount” shall mean the Water and Sewer Utility Revenue Bonds, Series 2012A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

“2012A Sewer Projects Fund” shall mean the 2012A Sewer Projects Fund created by this Resolution.

“2012A Water Projects Fund” shall mean the 2012A Water Projects Fund created by this Resolution.

Section 102. Rules of Interpretation.

(A) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(B) Wherever in this Resolution it is provided that any party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(C) All references in this Resolution to designated “Articles”, “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Resolution as originally executed. The words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision.

(D) The Table of Contents and the Article and Section headings of this Resolution shall not be treated as a part of this Resolution or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Authorization of and Security for Series 2012A Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following series of revenue bonds (referred to collectively, as the “Series 2012A Bonds”): “City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2012A,” in the aggregate total principal amount not to exceed \$17,710,000, as provided by and under the authority of the Act, for the purpose of providing funds to pay the Project Costs, Costs of Issuance associated with the Series 2012A Bonds and funding the 2012A Bond Reserve Subaccount.

The principal amount of the Series 2012A Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source. The Series 2012A Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to the lien on the Net Revenues of the Existing Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2012A Bonds.

The Series 2012A Bonds shall not have any priority with respect to the payment of principal or interest over any revenue bonds of the City hereafter issued in accordance with the provisions of Section 902 of this Resolution which are on a parity with the Series 2012A Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2012A Bonds.

The Series 2012A Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2012A Bonds.

Section 202. Description of Series 2012A Bonds. The Series 2012A Bonds shall be issued in denominations of \$5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, and shall be numbered in such manner as the Bond Registrar shall determine. The Series 2012A Bonds shall be dated the Dated Date. The Series 2012A Bonds shall mature or be subject to mandatory redemption on the dates and shall bear interest at the rates per annum (computed on the basis of a 360-day year of 12 30-day months) set forth on **Exhibit B** to this Resolution. Such interest shall be payable on the Interest Payment Dates to the Owners as their names appear on the Registration Books at the close of business on the Record Dates. The Series 2012A Bonds shall mature in the amounts on the Principal Payment Dates or be subject to mandatory redemption in the amounts set forth on **Exhibit C** to this Resolution. The City Manager or his designee or the Finance Director is hereby authorized to approve the final principal amount, the amount due on each maturity or mandatory redemption date, the amount to deposit in accounts and funds established under this Resolution and the amount of Purchase Price for the Series 2012A Bonds as to be set forth on **Exhibit C** to this Resolution; provided (a) the final principal amount shall not exceed the maximum principal amount for the Series 2012A Bonds set forth in Section 201 of this Resolution, (b) the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit B** to this Resolution, (c) the amount deposited in the 2012A Bond Reserve Subaccount shall equal the 2012A Bond Reserve Requirement, and (d) such amounts approved by the City Manager or his designee or the Finance Director are consistent with the other terms and provisions of this Resolution.

The Series 2012A Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Series 2012A Bonds maturing on the respective Principal Payment Dates as

authorized herein. The manner of payment of the principal of and the interest on the Series 2012A Bonds to DTC, and other matters relating to the distribution of the Series 2012A Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representations.

In the event, subject to the operational rules of DTC, (i) DTC determines not to continue to act as securities depository for the Series 2012A Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Series 2012A Bonds would adversely affect the interests of the beneficial owners of such Series 2012A Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Series 2012A Bonds in the form of fully registered certificates in denominations of \$5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners. If issued in certificated form, the certificates representing the Series 2012A Bonds shall be numbered in such manner as the Series 2012A Bond Registrar shall determine.

Section 203. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Series 2012A Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are hereby authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Series 2012A Bonds; and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following Section 204(A) and as governed by the terms of the Letter of Representations.

In the event that the Series 2012A Bonds should be issued and delivered in certificated form at anytime after the initial delivery of the Series 2012A Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Series 2012A Bonds on behalf of the City; and the Paying Agent will make payment for the Series 2012A Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following Section 204(B).

Section 204. Method and Place of Payment of Series 2012A Bonds.

(A) Series 2012A Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of Series 2012A Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York; and such certificates will be immobilized in its custody. Purchases of the Series 2012A Bonds in denominations permitted by Section 202 hereof must be made by or through Direct Participants of DTC, which will receive a credit for

the Series 2012A Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2012A Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Series 2012A Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Series 2012A Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Series 2012A Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and any premium, if any, on the Series 2012A Bonds shall be paid to the Owner of each Series 2012A Bond upon presentation and surrender of the Series 2012A Bond to the Paying Agent for payment and cancellation on the maturity date, or the redemption date, as the case may be, of the Series 2012A Bond. The interest on the Series 2012A Bonds shall be mailed by the Paying Agent to the Owner of each Series 2012A Bond at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

Section 205. Method of Execution and Authentication of Series 2012A Bonds. The Series 2012A Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk, and the seal of the City shall be affixed or imprinted thereon. The Series 2012A Bonds shall be registered in the office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk with the seal of the City affixed or imprinted thereon. The Series 2012A Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed or imprinted thereon. In the event that any of the aforementioned officers shall cease to hold such offices before the Series 2012A Bonds are issued and delivered, the Series 2012A Bonds may be issued and transferred to other owners as though said officers had not ceased to hold office, and such signatures appearing on the Series 2012A Bonds shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Series 2012A Bonds shall not be valid obligations under the provisions of the Bond Ordinance and this Resolution until authenticated by a duly authorized representative of the Bond Registrar by the manual execution of the Certificate of Authentication appearing on each Series 2012A Bond. It shall not be necessary that the same representative of the Bond Registrar execute the Certificate of Authentication on all of the Series 2012A Bonds.

Section 206. Payment of Costs of Bonds. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i)

reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 207. Registration, Transfer and Exchange of Bonds. In the event the Series 2012A Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept by the Bond Registrar (the “Registration Books”), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Series 2012A Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Series 2012A Bonds, and such payments shall be made only to DTC in accordance with Section 204(A) of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City’s liability upon such Series 2012A Bonds, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Resolution, upon payment of the principal amount thereof and the interest thereon or for replacement pursuant to this Resolution, such Bond shall be canceled by the Bond Registrar and the canceled Bond shall

be returned to the City Clerk, or such canceled Bond shall be destroyed by the Bond Registrar and a certificate evidencing such destruction shall be furnished to the City.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City may execute and the Bond Registrar may authenticate a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated certificate, such mutilated certificate shall first be surrendered to the City or the Bond Registrar, and, in the case of any lost, stolen or destroyed certificate, there shall first be furnished to the Bond Registrar and the City evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Bond Registrar. In the event any such certificate shall have matured, then and in such event instead of issuing a duplicate certificate, the City and the Bond Registrar may pay the same without the physical surrender of such certificate. The City and the Bond Registrar may charge to the Owner of such certificate their reasonable fees and expenses in connection with replacing a mutilated, stolen, lost or destroyed certificate.

Section 210. Execution and Delivery of Series 2012A Bonds. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Series 2012A Bonds without unnecessary delay in the form and manner herein specified, including a reasonable quantity of replacement bond certificates for use in accordance with the provisions of this Resolution; and when executed the Series 2012A Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Series 2012A Bonds shall have been executed, registered and authenticated as required by this Resolution, the Series 2012A Bonds shall be delivered at one time to or upon the order of the Underwriter, but only upon receipt by the City of the full Purchase Price therefor; and the proceeds of the Series 2012A Bonds shall immediately be applied by the City as in the Bond Ordinance and this Resolution provided.

Upon the issuance of the Series 2012A Bonds, there shall be filed with the Fiscal Agent and with the Treasurer of the State, the following:

- (A) an executed original or certified copies of the Bond Ordinance and this Resolution, together with an affidavit of publication of the Bond Ordinance;
- (B) an opinion of Bond Counsel to the effect that the Series 2012A Bonds constitute valid and legally binding special obligations of the City and that the interest on the Series 2012A Bonds is not includable in gross income for purposes of Federal income taxation and is exempt from Kansas income taxation, subject to such restrictions and limitations as shall be described therein; and
- (C) such other certificates, opinions, statements, receipts and documents as are required by the Act or as Bond Counsel shall reasonably require for

delivery of the Series 2012A Bonds.

Section 211. Official Statement. The Governing Body hereby approves the form and content of the “deemed final” Preliminary Official Statement prepared in the initial offering and sale of the Series 2012A Bonds, and the subsequent insertion of interest rates, yields and related information for the Series 2012A Bonds. The lawful use of the final Official Statement in the reoffering of the Series 2012A Bonds by the Underwriter is hereby approved and authorized.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional Redemption. The Series 2012A Bonds maturing 2013 through 2020, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2012A Bonds maturing October 1, 2021, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 2020. The Series 2012A Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price of 100% of the principal amount, plus accrued interest thereon to the date established for such redemption and payment.

Section 302. Sinking Fund Redemption. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit C** to this Resolution.

Section 303. Selection of Bonds to be Redeemed.

(A) The Series 2012A Bonds shall be redeemed only in the principal amount of \$5,000, or integral multiples thereof. When less than all of the Outstanding Series 2012A Bonds are to be redeemed and paid prior to maturity, such Series 2012A Bonds shall be redeemed in such manner as the City shall determine, with Series 2012A Bonds of less than a full maturity to be selected by lot in units of \$5,000.

(B) In the case of a partial redemption of Series 2012A Bonds when Series 2012A Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in connection with such redemption each \$5,000 of face value shall be treated as though it were a separate Series 2012A Bond in the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any Series 2012A Bond is selected for redemption, then upon notice of intention to redeem such \$5,000 unit or units, the Owner or the Owner’s duly authorized agent shall forthwith present and surrender such Series 2012A Bond to the Bond Registrar and Paying Agent (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the \$5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Series 2012A Bond of the aggregate principal amount of the unredeemed portion of the principal amount of such Series 2012A Bond. If the Owner of any Series 2012A Bond of a denomination greater than \$5,000 shall fail to present such Series 2012A Bond as

aforesaid, such Series 2012A Bond shall, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

Section 304. Notice of Redemption. If the City elects to call any Series 2012A Bond for redemption and payment prior to the maturity thereof, it shall give written notice of such intention to the Paying Agent not less than sixty (60) days (or such lesser period of time acceptable to the Paying Agent) prior to the date selected for payment of the Series 2012A Bonds to be so called. The Paying Agent shall, upon receipt of any such written notice from the City, mail a written notice of redemption which notice shall specify the date selected for redemption and describe the Series 2012A Bonds to be so called (such description to include the series, principal amount, maturities and CUSIP numbers, if any, of the Series 2012A Bonds to be so called). Such written notice to be given by the Paying Agent shall be mailed by United States first class mail on a date which is not less than thirty (30) days prior to the date fixed for redemption to the Owners of the Series 2012A Bonds subject to the call as shown by the Registration Books, unless any Owner has waived such written notice of redemption, and, if applicable, to the Bond Insurer. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice. However, failure to give any notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Series 2012A Bonds. Any notice of redemption shall state the date of the redemption, the place or places at which Series 2012A Bonds shall be presented for payment, the series, maturities and numbers of the Series 2012A Bonds or portions thereof to be redeemed and the principal amount thereof being redeemed, the price to be paid for the Series 2012A Bonds to be redeemed, shall state that interest on the Series 2012A Bonds described in the notice will cease to accrue from and after the date established for redemption, and shall state that the redemption is conditioned upon there being on deposit on the date of redemption, sufficient money to pay the full redemption price of the Series 2012A Bonds to be redeemed.

Section 305. Effect of Call for Redemption. On or before the redemption date, funds or Government Obligations shall be deposited with the Paying Agent in an amount sufficient to provide for the payment of the redemption price of the Series 2012A Bonds called for redemption on the date established for redemption. Upon the deposit of such funds or Government Obligations, and notice having been given as provided in Section 304 above, the Series 2012A Bonds or portions thereof thus called for redemption shall cease to bear interest on the specified redemption date and shall no longer be entitled to the protection, benefit or security of the Bond Ordinance and this Resolution and shall not be deemed to be Outstanding under the provisions hereof.

ARTICLE IV

FORM OF BONDS

Section 401. Form of Bonds Generally. The definitive typewritten or printed form of the certificates representing Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the

form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act.

Section 402. Form of Series 2012A Bonds. The definitive typewritten or printed form of the certificates representing the Series 2012A Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Series 2012A Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Series 2012A Bonds; and hereby further authorizes, orders and directs Bond Counsel, in the event the Series 2012A Bonds are issued in certificated form at any time after the initial issuance and delivery of the Series 2012A Bonds, to prepare the form of and cause such certificated Series 2012A Bonds to be printed.

ARTICLE V

FUNDS AND ACCOUNTS

Section 501. Ratification of Existing Funds and Accounts of the Utility; Administration. Simultaneously with the issuance of the Series 1993 Bonds, and as directed by the Series 1993 Ordinance, there were created within the Treasury of the City the following separate Funds and Accounts of the Utility:

- (A) Water and Sewer Utility Principal and Interest Account (the “Principal and Interest Account”);
- (B) Water and Sewer Utility Bond Reserve Account (the “Bond Reserve Account”);
- (C) Water and Sewer Utility Depreciation and Replacement Account (the “Depreciation and Replacement Account”); and
- (D) Water and Sewer Utility Improvement Account (the “Improvement Account”), and within the Improvement Account, the following subaccounts:
 - (1) Improvement Account Subaccount for Water Utility Improvements (the “Water Improvement Account”), and
 - (2) Improvement Account Subaccount for Sewer Utility Improvements (the “Sewer Improvement Account”).

The foregoing Funds and Accounts originally created by the Series 1993 Ordinance, and the subaccounts thereof ratified, confirmed and continued by the Series 1998 Ordinance, the

Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance and the Series 2011A Ordinance are hereby ratified, confirmed and continued for the security and benefit of the Owners of the Bonds; and the City consents and agrees that so long as any of the Bonds remain outstanding and unpaid, the City will maintain and administer said funds and accounts in accordance with the provisions of the Series 1998 Ordinance, the Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance, the Series 2011A Ordinance and the Bond Ordinance and this Resolution.

Section 502. Creation of Additional Funds and Accounts of the Utility; Administration; Costs of Issuance Account. Simultaneously with the issuance of the Series 2012A Bonds, there shall be created within the Treasury of the City the following additional separate Funds and Accounts of the Utility:

- (A) Within the Principal and Interest Account, the following additional subaccount: Principal and Interest Subaccount for Water and Sewer Utility Revenue Bonds, Series 2012A (the “2012A Principal and Interest Subaccount”);
- (B) Within the Bond Reserve Account, the following additional subaccount: Bond Reserve Subaccount for Water and Sewer Utility Revenue Bonds, Series 2012A (the “2012A Bond Reserve Subaccount”);
- (C) Costs of Issuance Account for Water and Sewer Utility Revenue Bonds, Series 2012A (the “2012A Costs of Issuance Account”);
- (D) 2012A Sewer Utility Projects Fund (the “2012A Sewer Projects Fund”);
- (E) 2012A Water Utility Projects Fund (the “2012A Water Projects Fund”);
and
- (F) Rebate Account for Water and Sewer Utility Revenue Bonds, Series 2012A (the “Rebate Account”).

The Governing Body hereby covenants and agrees that the Funds and Accounts created by this Section, shall be maintained and administered by the City in accordance with the provisions of this Resolution; and the Governing Body hereby covenants and agrees that the City shall make deposits into, disbursements from, and shall invest moneys in, each and all of said Funds and Accounts as hereinafter in this Resolution provided. The Governing Body hereby further covenants and agrees that (i) the Accounts referred to in subsections (A) and (B), and each of them, shall be continued for the security and benefit of the Owners of the Series 2012A Bonds for so long as any of the Series 2012A Bonds remain Outstanding and unpaid; (ii) that the Costs of Issuance Account referred to in subsection (C) shall be administered and terminated as provided by Section 503 hereof; (iii) that the Project Funds referred to in subsection (D) and (E) shall be administered and terminated as provided by Section 602 hereof; and (iv) that the Rebate

Account referred to in subsection (F) shall be administered and terminated as provided by Section 704 hereof and the Tax Compliance Agreement.

The City shall maintain a practice of keeping separate and distinct accounts and subaccounts within the Funds and Accounts herein referred to and as created by this Resolution for the separate operations of the Water Utility and the Sewer Utility for budget and accounting purposes; provided, however, such segregation of the Funds and Accounts, and any subaccounts thereof, for such purpose shall have no effect upon the pledge and lien of the Bonds on the Net Revenues of the Utility.

Section 503. Costs of Issuance Account. The Governing Body hereby further covenants and agrees that the moneys deposited to the 2012A Costs of Issuance Account shall be immediately expended, to the extent possible, to pay the Costs of Issuance of the Series 2012A Bonds, and, that any moneys remaining in the 2012A Costs of Issuance Account on the date which is thirty (30) days prior to the first Principal Payment Date of the Series 2012A Bonds shall all be transferred to the 2012A Principal and Interest Subaccount to pay a portion of the first principal due on the Series 2012A Bonds; and that the 2012A Costs of Issuance Account shall thereafter be terminated.

ARTICLE VI

DISPOSITION OF BOND PROCEEDS

Section 601. Disposition of Series 2012A Bond Proceeds. The proceeds of the Series 2012A Bonds (*i.e.*, the Purchase Price), upon receipt shall be immediately deposited and credited as follows:

- (A) to the credit of the 2012A Costs of Issuance Account, the sum set forth on **Exhibit C** to this Resolution;
- (B) to the credit of the 2012A Principal and Interest Subaccount, the amount of accrued interest received as a portion of the Purchase Price to be applied to the first interest payment on the Series 2012A Bonds;
- (C) to the credit of the 2012A Bond Reserve Subaccount, the sum equal to the 2012A Bond Reserve Requirement set forth on **Exhibit C** to this Resolution;
- (D) to the credit of the 2012A Water Projects Fund, the sum set forth on **Exhibit C** to this Resolution; and
- (E) to the credit of the 2012A Sewer Projects Fund, the sum set forth on **Exhibit C** to this Resolution.

Section 602. Project Funds; Construction of Projects. The City covenants that in constructing the Projects it will perform all duties and obligations relative thereto as are now or

may hereafter be imposed by the Act and the provisions of this Resolution. Withdrawals from the Project Funds, or either of them, shall be made only upon duly authorized and executed warrants which are accompanied by a statement of the Director of Finance to the effect that such payment is being made for a purpose within the scope of this Resolution. Any moneys remaining in the Project Funds upon the full and final completion of the Projects and the payment of all Project Costs shall be transferred to the 2012A Principal and Interest Subaccount and shall be used for the payment of the principal of and the interest on the Series 2012A Bonds, and the Project Funds shall thereafter be terminated. To the extent no other available funds are held under this Resolution, any moneys remaining in the Project Funds upon an event of default with respect to the Series 2012A Bonds as set forth in Section 1101 (A) or (B) hereof shall be transferred to the 2012A Principal and Interest Subaccount and shall be used for the payment of the principal and interest on the Series 2012A Bonds.

Section 603. Substitute Projects. The City may elect to substitute or add other projects pursuant to this Section provided the following conditions are met: (a) the Substitute Project and the issuance of bonds, the principal of and interest on which are payable from Net Revenues of the Utility, to pay the cost of the Substitute Project has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Series 2012A Bonds to include the Substitute Project and (c) the City has received an opinion of Bond Counsel to the effect that the Substitute Project will not adversely affect the tax-exempt status of the Series 2012A Bonds under State or federal law and the Substitute Project has been authorized pursuant to this Section and the laws of the State.

ARTICLE VII

COLLECTION AND APPLICATION OF REVENUES; INSUFFICIENT FUNDS; REBATE ACCOUNT

Section 701. Collection, Segregation and Disposition of Revenues. The City covenants and agrees that from and after the date of adoption of the Bond Ordinance and this Resolution, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund (the "Revenue Fund") heretofore created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City. From and after the adoption of this Resolution, the City will allocate all of the moneys held in the Revenue Fund to the Funds and Accounts of the Utility as follows:

- (A) The cost of operating and maintaining the Utility shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper expenses of operation and maintenance for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

- (B) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Principal and Interest Account, for credit to the respective Subaccounts thereof, the following amounts:
- (1) an equal pro rata portion of the amount of interest which will become due on the Outstanding Bonds on the next succeeding Interest Payment Date; plus
 - (2) an equal pro rata portion of the amount of principal that will become due on the Outstanding Bonds on the next succeeding Principal Payment Date;

to the end that at all times thirty (30) days prior to each Interest Payment Date and Principal Payment Date, or to any date of redemption, if applicable, there shall be sufficient moneys in the Principal and Interest Account to transmit the amount of maturing interest and principal on the Outstanding Bonds to the Paying Agent for payment to the Owners when due.

All amounts paid and credited to the 2012A Principal and Interest Subaccount shall be used for the sole purpose of paying the interest on and the principal of the Series 2012A Bonds as and when the same become due, and may also be used for paying any fees of the Bond Registrar and Paying Agent in connection with the Series 2012A Bonds.

- (C) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement.

Simultaneously with the issuance of the Series 2012A Bonds, the City shall deposit in the 2012A Bond Reserve Subaccount an amount equal to the 2012A Bond Reserve Requirement. All earnings on investments from the 2012A Bond Reserve Subaccount (other than any required deposits to the Rebate Account) shall accrue to and become a part of the 2012A Bond Reserve Subaccount until it achieves and is being maintained at the 2012A Bond Reserve Requirement at which time such investment earnings shall be transferred to the 2012A Principal and Interest Subaccount. The 2012A Bond Reserve Subaccount shall be used solely for the payment of principal and interest on the Series 2012A Bonds for which funds might not otherwise be available, or to pay a like amount of final maturing Series 2012A Bonds. Should the City expend any portion of the 2012A Bond Reserve Subaccount and thereby reduce it below the 2012A Bond Reserve Requirement (except for the purpose of retiring all Outstanding Series 2012A Bonds), or should a valuation of the 2012A Bond Reserve

Subaccount indicate that it is below the 2012A Bond Reserve Requirement, the City shall resume the monthly transfers to the 2012A Bond Reserve Subaccount as set forth above such that the 2012A Bond Reserve Subaccount will accumulate to the 2012A Bond Reserve Requirement within twelve (12) months of the date of the related deficiency.

- (D) After providing for the payments and transfers set forth in and required by the preceding subsections, there shall next be transferred from the Revenue Fund proportionate monthly amounts equal to the next required Payment to the City.
- (E) The required status of the Depreciation and Replacement Account shall be fifteen percent (15%) of the Operating Revenues of the Utility for the preceding year. The City shall, after providing for the payments and transfers set forth in and required by the preceding subsections, next set aside and transfer monthly from the Revenue Fund, minimum monthly amounts to the end that the Depreciation and Replacement Account will reach its required status within a period of thirty (30) months from the first such transfer. All earnings on investments from the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until it achieves its required status, and thereafter shall be transferred to the Improvement Account.

Except as hereinafter provided, all amounts credited to the Depreciation and Replacement Account shall be used by the City for the purpose of (i) making extraordinary maintenance and repairs to the Utility, (ii) making capital improvements in and to the Utility, and (iii) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay the costs of operating and maintaining the Utility.

If the City shall ever be compelled to use and expend any part of the Depreciation and Replacement Account for the purposes specified above, and such use shall reduce the amount of the Depreciation and Replacement Account below its required status, then the City covenants and agrees that after making all payments or credits at the time required to be made by the City under the provisions of the foregoing subsections, it will thereafter resume the minimum monthly payments and credits from the Revenue Fund into the Depreciation and Replacement Account to the end that it shall have again attained its required status within a period of eighteen (18) months.

- (F) In addition to the monthly transfers set forth in and required by the preceding subsections, the provisions of the Series 1998 Ordinance, the

Series 2000 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Series 2009 Ordinance, the Series 2010 Ordinance and the Series 2011A Ordinance, all moneys remaining in the Revenue Fund on each January 1, which shall not be required for the operation and maintenance of the Utility or for the transfers required by the preceding subsections for a period of ninety (90) days, shall be credited to the Improvement Account. Moneys in the Improvement Account may be used for the following purposes:

- (1) to pay operational and maintenance expenses of the Utility;
- (2) to make payments into or increase the amounts in any of the Funds and Accounts referred to in the preceding subsections to cover potential deficiencies in or to anticipate future requirements of those Funds and Accounts;
- (3) to pay the costs of making repairs to or extending, enlarging or improving the Utility;
- (4) to pay and redeem at or prior to maturity, or to purchase, Bonds or other outstanding indebtedness of the Utility at the fair market price thereof, or to transfer moneys to the Improvement Account to be used to pay debt service on general obligation debt of the City which were issued to pay the costs of extensions, enlargements or improvements to the Utility; or
- (5) to make transfers to the Revenue Fund.

The Improvement Account shall be continued and maintained until all Series 2012A Bonds authorized by the Bond Ordinance and this Resolution are no longer Outstanding.

Section 702. Insufficient Moneys in Funds and Accounts. Should there be at any time insufficient moneys in any or all of the Funds and Accounts described in the preceding subsections to pay any deficiencies in principal or interest payments required by the terms of any Outstanding Bonds, then such principal and interest shall be payable out of the first available Net Revenues received thereafter by the City from the operation of the Utility, including transfers from the Depreciation and Replacement Account and the Improvement Account, after providing only for immediately necessary operation and maintenance expense of the Utility.

Section 703. Transfer of Funds to Paying Agent. The Director of Finance is hereby authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both the principal of and premium, if any, and the interest on the Outstanding Bonds as and when the same become due, and also to pay the charges of the Paying Agent for acting in such capacity in the payment of the principal of and the interest on the

Bonds, and said charges shall be forwarded to the Paying Agent over and above the amount for the payment of the principal of and the interest on the Bonds.

Section 704. Deposits into and Application of Moneys in Rebate Account.

- (A) The City shall deposit into the Rebate Account such amounts as are required to be deposited therein pursuant to the Tax Compliance Agreement. All earnings on investments of moneys held in the Rebate Account shall be retained in the Rebate Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Rebate Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Tax Compliance Agreement), for payment to the United States of America, and neither the City nor the Owner of any Series 2012A Bond shall have any right in or claim to such money. All amounts held in the Rebate Account shall be governed by this Section and by the Tax Compliance Agreement.
- (B) The City shall remit part or all of the balance in the Rebate Account to the United States of America in accordance with the Tax Compliance Agreement (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Rebate Account after redemption and payment of all of the Series 2012A Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Rebate Account and shall be deposited into the Revenue Fund and be used only for Utility purposes.
- (C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Tax Compliance Agreement shall survive the defeasance or payment in full of the Series 2012A Bonds.
- (D) The City shall maintain records designed to show compliance with the provisions of this Section and the Tax Compliance Agreement for at least six (6) years after the date on which no Series 2012A Bonds shall remain Outstanding.
- (E) The terms, conditions and provisions under which the City will perform its duties regarding the Rebate Account and any Rebate Amount are set forth in a "Tax Compliance Agreement", dated as of the Date of Issuance of the Series 2012A Bonds. The form and text of the Tax Compliance Agreement is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or the Director of Finance are hereby authorized to execute and deliver the Tax Compliance Agreement for and on behalf of the City.

ARTICLE VIII

DEPOSIT AND INVESTMENT OF MONEYS; TAX COVENANTS

Section 801. Deposits. Cash moneys in each of the funds and accounts herein created and established shall be deposited in accordance with the laws of the State.

Section 802. Investments. Moneys held in the funds and accounts herein created or established may be invested by the City in Authorized Investments in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided that, such moneys shall not be invested in such manner as will violate the provisions of the Tax Compliance Agreement. Interest on any obligations held in any fund or account shall (except the amounts which are required to be deposited into the Rebate Account in accordance with the Tax Compliance Agreement) accrue to and become a part of said fund or account, except as might hereafter or elsewhere in this Resolution be required. The Value of the investments held in the funds and accounts as provided by this Article shall be determined as of the end of each calendar month. Except as otherwise provided herein, in the event that the amount held in any fund or account is in excess of the amount required to be held in such fund or account, such excess shall be transferred to the Revenue Fund. Authorized Investments in the 2012A Bond Reserve Subaccount shall mature within five (5) years of the investment therein.

All investments made pursuant hereto shall be made in accordance with the Tax Compliance Agreement.

Section 803. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2012A Bonds remain Outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Series 2012A Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable Rules and Regulations of the United States Treasury Department thereunder, to the extent applicable to the Series 2012A Bonds.

The Governing Body of the City hereby further covenants that it will use and expend the proceeds of the Series 2012A Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Series 2012A Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, to have caused the Series 2012A Bonds to be “arbitrage bonds” within the meaning of the Code; and to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Series 2012A Bonds for so long as any of the Series 2012A Bonds remain Outstanding and unpaid.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury Regulations as may be applicable to the Series 2012A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2012A Bonds; and the City specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amounts as described in the Tax Compliance Agreement.

ARTICLE IX

ADDITIONAL BONDS

Section 901. Prior Lien Bonds. The City covenants that it will not hereafter issue any revenue bonds which would in any way be superior to the Bonds or have any prior claim to the Net Revenues of the Utility.

Section 902. Parity Lien Bonds. The City may issue additional revenue bonds for Utility extensions, enlargements and improvements, which additional bonds shall be co-equal with the Bonds in stature and priority, but only under the following conditions:

- (A) When the issuance of additional revenue bonds payable from Net Revenues of the Utility of equal stature and priority is permitted by the statutes of the State.
- (B) When the average annual Net Revenues Available for Debt Service derived by the City from the operation of the Utility for the two (2) years next preceding the issuance of such additional bonds, together with estimated additional net income from rate increases in existence at the time of such new issue, which would have been generated for the two (2) years preceding issuance of such additional bonds, shall be in an amount equal to at least one hundred twenty percent (120%) of the maximum annual Debt Service Requirements (expressly including the City's obligations with respect to the repayment of amounts then due and owing under the terms of any Bond Reserve Insurance Policy) for any ensuing year of all then outstanding revenue indebtedness of the Utility when added to the Debt Service Requirements of such proposed additional bonds. Whenever it is provided in this Section that an estimate shall be obtained of the income which would have been derived from rate increases, such estimates shall be prepared by the Consulting Engineers.
- (C) When the City shall not be in default in the making of any payments at the time required to be made by it into the respective Funds and Accounts of the Utility and shall not be in default in any covenants or procedures established in any ordinance or resolution of the City authorizing existing indebtedness of the Utility.

- (D) When all reductions in the Bond Reserve Account shall be restored thereto.
- (E) When provision is made for a deposit to the Bond Reserve Account in such amount as will be required, following such deposit, to maintain in the Bond Reserve Account an amount which has the same relationship to the total amount of Outstanding Bonds as the 2012A Bond Reserve Requirement bears to the Series 2012A Bonds.
- (F) When the Resolution authorizing such additional bonds shall contain substantially the same terms, conditions, covenants and procedures as established in this Resolution.

As an alternative to the foregoing, the City may issue additional revenue bonds for the purpose of refunding Outstanding Bonds without complying with the requirements of Section 902(B), which additional revenue refunding bonds shall be on a parity with and co-equal with the Bonds.

Section 903. Subordinate Lien Bonds. In addition to the authority to issue parity lien bonds as set forth in the preceding Section, the City may issue revenue bonds which shall be junior and subordinate to the Bonds. If at any time the City shall be in default in paying any of the interest on or the principal of the Bonds or in making any of the transfers required to any of the Accounts or Funds herein specified, then the City shall make no payment of either the principal of or the interest on such subordinate bonds until all conditions of default shall be cured.

ARTICLE X

COVENANTS OF THE CITY

Section 1001. Rate Covenant. While any of the Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in the Bond Ordinance and this Resolution provided; and it is hereby covenanted and agreed that such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of the Bond Ordinance and this Resolution and the terms of the Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City's obligations with respect to the Payment to the City; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year's Debt Service Requirements for all revenue bond

indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained in this Section 1001, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 1002. Maintenance of Utility. The City covenants and agrees that it will faithfully and punctually perform all duties with respect to the Utility required by the Act, by the applicable rate ordinances and by this Resolution, including the fixing and collecting of rates, fees and charges for the use of the Utility and the deposit of the same in the special Funds and Accounts created by this Resolution; and the City covenants and binds itself not to sell, mortgage, lease or rent or in anyway dispose of the Utility or any substantial part thereof, until the principal of and all of the interest on all Outstanding Bonds shall have been paid in full, or unless and until provision shall have been made for the payment of the full amount of said principal of and interest then remaining outstanding and unpaid; and the City, will continuously maintain the Utility in good repair and working order, and will operate its Utility in a business like and efficient manner.

Section 1003. Insurance. The City will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the City will use the proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such proceeds shall be used in redeeming or paying off Outstanding Bonds of the Utility, in accordance with their call provisions. The City also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently \$500,000.00 per occurrence). In lieu of the foregoing, the City may establish a self-insurance program which will provide substantially the same protection for the Owners.

Section 1004. Financial Reports. As long as any Bonds are Outstanding, the City shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the City will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for

the use and services of the Utility which will provide adequate funds to meet such requirements.

The City shall annually cause an audit to be made by a certified public accountants' firm of the operation of the Utility, which audit shall be open to public inspection and shall be completed within one hundred eighty (180) days after the completion of the City's Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements. The City shall also prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. The books and accounts shall be kept in accordance with generally accepted accounting principles.

As long as the Pre-2009 Bonds are Outstanding, the audit shall include the following information:

- (A) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.
- (B) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.
- (C) A statement showing all Outstanding Bonds which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.
- (D) A statement of the number of customers served by the Utility at the end of the year.
- (E) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.
- (F) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the City.
- (G) A statement of the Net Revenues Available for Debt Service of the Utility.
- (H) A statement of any amounts to be deposited in the Rebate Account.

As long as the Pre-2009 Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

- (A) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.
- (B) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.
- (C) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.
- (D) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.
- (E) A statement of the amount of principal and interest to be paid on Outstanding Bonds and any general obligation bonds to be paid from Gross Revenues of the Utility during the next Fiscal Year.
- (F) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.
- (G) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Pre-2009 Bonds are Outstanding, copies of such audit and such budget shall be mailed to the Underwriter, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the City.

The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

Section 1005. Consulting Engineers; Consulting Engineers' Report. The City covenants that it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineers by this Resolution, employ an independent engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in such work.

Not less than every three (3) years, the City will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed in the Office of the City Clerk, and duplicate copies thereof shall be mailed promptly to the Underwriter and to the Bond Insurer, if any.

ARTICLE XI

DEFAULT AND REMEDIES

Section 1101. Default. Each of the following occurrences is hereby declared to be an “Event of Default” under this Resolution:

- (A) Payment of the principal and of the redemption premium, if any, of any Outstanding Bond shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or
- (B) Payment of any installment of interest on any Outstanding Bond shall not be made when the same shall become due and payable; or
- (C) The City shall for any reason be rendered incapable of fulfilling its obligations hereunder; or
- (D) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the City shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or
- (E) Final judgment for the payment of money shall be rendered against the City as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof, or
- (F) An order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the City, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or
- (G) Any proceeding shall be instituted, with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any Federal or State statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available For Debt Service of the Utility; or

- (H) The City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Outstanding Bonds, the Bond Ordinance or in this Resolution on the part of the City to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Bond Insurer, if any, or the Owner of any Outstanding Bond.

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the principal of and/or the interest on any Series 2012A Bonds or whether a payment on the Series 2012A Bonds has otherwise been made under the terms and provisions of this Resolution, no effect shall be given to payments made under any Municipal Bond Insurance Policy.

If an Event of Default shall have occurred and be continuing, the City shall request the Paying Agent to promptly notify the Bond Insurer, if any, and the Owners of such default.

Section 1102. Remedies. The Bond Ordinance and this Resolution and all of the provisions thereof and hereof shall constitute a contract between the City, the Bond Insurer, if any, and each of the Owners of Series 2012A Bonds issued under the Bond Ordinance and this Resolution, and any such Owner of any one or more of the Series 2012A Bonds may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by this Resolution, subject to the limitations of Section 1103 hereof.

Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of this Section and of Section 1103 hereof, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in this Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Bonds as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

- (A) If the principal of all the Bonds shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the

payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest on the principal amount of such Bonds at the respective rates specified therein from the respective dates upon which such Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Bonds due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of the Bonds and to the redemption of the Bonds, all in accordance with the provisions of this Resolution.

- (B) If the principal of all of the Bonds shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds, and then to the payment of any interest due and payable after maturity on the Bonds, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

second: to the payment of the principal of the Bonds, ratably, to the persons entitled thereto, without preference or priority of any Bond over any other Bond.

Whenever moneys are to be applied by the City pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Director of Finance in her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in

the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the City; and the City shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the City acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken.

No Owner of any of the Bonds shall have any right in any manner whatever to affect, disturb or prejudice the security of this Resolution or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners.

No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient.

Section 1103. Limitation on Exercise of Remedies by Owners. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Ordinance or this Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default shall have occurred, (ii) the Owners of twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have made written request to the City, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iii) the City shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the City, to be conditions precedent to the execution of the powers and

trusts of the Bond Ordinance and this Resolution, and to any action or cause of action for the enforcement of the Bond Ordinance and this Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond Ordinance or this Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Bonds then Outstanding. Nothing in the Bond Ordinance or this Resolution contained shall, however, affect or impair the right of any Owner to payment of the principal of and the interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of, premium, if any, and the interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 1104. Remedies Cumulative. No remedy herein conferred on the City, the Bond Insurer, if any, or the Owners is intended to be exclusive of any other remedy or remedies, but each and every such remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the City, the Bond Insurer, if any, or by the Owners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 1105. No Obligation to Levy Taxes. Nothing contained in the Bond Ordinance or this Resolution shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or the interest on the Bonds.

ARTICLE XII

AMENDMENTS

Section 1201. Amendments. Except as set forth herein, the provisions of the Bonds authorized by the Bond Ordinance and this Resolution, and the provisions of the Bond Ordinance or this Resolution may be modified or amended at any time by the City with the prior written consent of the Bond Insurer, if any, and the Owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds herein authorized at the time Outstanding; provided, however, that no such modification or amendment shall permit or be construed as permitting (i) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of any interest on any Bonds issued hereunder, or (ii) a reduction in the principal amount of any Bonds or the rate of interest thereon, or (iii) a reduction in the aggregate principal amount of Bonds, the consent of one hundred percent

(100%) of the Owners of which, together with the prior written consent of any Bond Insurer, if any, is required for any such amendment or modification.

The City may from time to time, without the consent of or notice to any of the Owners, but with fifteen (15) days written notice to any rating agency which has assigned a rating to the Series 2012A Bonds, provide for amendments to the Bonds, the Bond Ordinance or this Resolution, for any one or more of the following purposes:

- (A) to cure any ambiguity or formal defect or omission in the Bond Ordinance or this Resolution or to make any other change not prejudicial to the Owners;
- (B) to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;
- (C) to provide for the issuance of coupon bonds and the exchange of fully registered Series 2012A Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that no such amendments shall become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the Series 2012A Bonds for such coupon bonds will not cause the interest on the Series 2012A Bonds to be includable in the gross income of the recipients thereof under the provisions of applicable Federal law; or
- (D) to conform this Resolution to the Code or future applicable Federal law concerning tax exempt obligations.

Any provision of this Resolution expressly recognizing or granting rights in or to any Bond Insurer may not be amended in any manner which affects the rights of such Bond Insurer hereunder without the prior written consent of such Bond Insurer.

Section 1202. Written Evidence of Amendments. Every amendment or modification of a provision of the Bonds, the Bond Ordinance or of this Resolution to which the prior written consent of the Owners and/or of any Bond Insurer is given as above provided shall be expressed in an ordinance or resolution of the City, as applicable, amending or supplementing the provisions of the Bond Ordinance or this Resolution and shall be deemed to be a part of the Bond Ordinance or this Resolution, as applicable. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification, if any. Prior to the adoption of such ordinance or resolution, the City shall receive an opinion from Bond Counsel to the effect that the proposed amendment is in compliance with the requirements of the preceding Section and that the passage of the ordinance or resolution authorizing such amendment will not adversely affect the tax-exempt status of the interest on the Bonds. At least fifteen (15) days prior to the execution of any such amendment or modification of the Bond Ordinance or this

Resolution, the City shall furnish the Bond Insurer, if any, and any rating agency which has assigned a rating on the Series 2012A Bonds with a copy of the amendment, change or modification proposed to be made. A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owners of any Bond or prospective purchaser or Owners of any Bond authorized by the Bond Ordinance and this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or resolution will be sent by the City Clerk to any such Owner or prospective Owner. A certified copy of all proceedings relating to the execution of every such amendatory or supplemental ordinance or resolution, if any, shall be furnished to any Bond Insurer.

Section 1203. Consent Required in Addition to Owner Consent. Unless otherwise provided in this Section, if the Series 2012A Bonds are insured under a Municipal Bond Insurance Policy, the Bond Insurer's consent shall be required in addition to Owner consent, when required, for the following purposes (i) the execution and delivery of any supplemental Ordinance or Resolution; (ii) removal of the Paying Agent and selection and appointment of any successor paying agent; and (iii) the initiation or approval of any action not described in the foregoing clause (i) or (ii) which requires Owner consent.

ARTICLE XIII

DEFEASANCE

Section 1301. Defeasance. When the principal of all of the Series 2012A Bonds and any Parity Bonds, the premium thereon, if any, and the interest thereon shall have been paid and discharged, then the requirements contained herein and the pledge of Net Revenues made hereunder and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Paying Agent or a bank located in the State and having full trust powers, at or prior to the maturity or redemption date of the Bonds, as the case may be, in trust for and irrevocably appropriated thereto, cash moneys and/or non-callable direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America (if approved by any applicable Bond Insurer), or other investments allowed by State law (if approved by any applicable Bond Insurer) which, together with the interest to be earned on such investments, will be sufficient for the payment of the principal of the Bonds, the premium thereon, if any, and the interest accrued to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any such Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided in this Resolution. Any moneys which at any time shall be deposited with the Paying Agent or said bank in the State by or on behalf of the City for the purpose of paying and discharging any of the Bonds shall be and are hereby assigned, transferred and set over to the Paying Agent or such bank in the State in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys deposited with the Paying Agent

or said bank in the State shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution. At such time as a Bond shall be deemed to be paid, it shall no longer be secured by or entitled to the benefits of this Resolution, except for the purposes of any such payment from such moneys or Government Securities.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Parties Interested Herein. Nothing in the Bond Ordinance or this Resolution expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2012A Bonds, any right, remedy or claim under or by reason of the Bond Ordinance or this Resolution, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Bond Ordinance or this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2012A Bonds.

Section 1402. Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution, or of the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation or agreement contained in the Bonds, the Bond Ordinance or in this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 1403. Continuing Disclosure Certificate. To assist the Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission, the City is hereby authorized to execute and deliver a Continuing Disclosure Certificate dated as of the Date of Issuance of the Series 2012A Bonds (the “Continuing Disclosure Certificate”), under which the City will provide certain annual financial information and notice of the occurrence of certain material events, all as more particularly set forth therein.

Section 1404. Further Authority. The Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, are hereby authorized, ordered and directed to execute any and all documents and agreements required to be executed pursuant to this Resolution or in connection with the issuance, sale and delivery of the Series 2012A Bonds, including, but not limited to, this Resolution, the Official Statement, the Continuing Disclosure Certificate, together with any and all supporting documents and certificates required in the issuance of the Series 2012A Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2012A Bonds, all for and on behalf of, and as the act and deed of the City

and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body concurrently with adoption of this Resolution, with such minor corrections or amendments thereto as the Mayor or other signatory shall approve, which approval shall be evidenced by his execution thereof; and the Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby; and further, to furnish and provide any and all notices and documents at the times indicated to the various parties as required in the several Articles of this Resolution, including, but not limited to, the Underwriter for the Series 2012A Bonds and the Bond Insurer, if any.

The execution and attestation of this Resolution, the Official Statement, the Continuing Disclosure Certificate and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval, correctness and completeness of said documents and each of them.

The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2012A Bonds, the Official Statement, the Continuing Disclosure Certificate, and the Utility, all as necessary to carry out, give effect to and comply with the transactions contemplated hereby and thereby.

Section 1405. Previous Ordinances Controlling. To the extent any provision of this Resolution is in conflict with the Series 1998 Ordinance, the Series 1998 Ordinance shall control so long as any Series 1998 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2000 Ordinance, the Series 2000 Ordinance shall control so long as any Series 2000 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005A Ordinance, the Series 2005A Ordinance shall control so long as any Series 2005A Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005B Ordinance, the Series 2005B Ordinance shall control so long as any Series 2005B Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005C Ordinance, the Series 2005C Ordinance shall control so long as any Series 2005C Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2006 Ordinance, the Series 2006 Ordinance shall control so long as any Series 2006 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2008A Ordinance, the Series 2008A Ordinance shall control so long as any Series 2008A Bonds remain outstanding, to the extent any provision of this Resolution is in conflict with the Series 2009 Ordinance, the Series 2009 Ordinance shall control so long as any Series 2009 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2010 Ordinance, the Series 2010 Ordinance shall control so long as any Series 2010 Bonds remain outstanding; and to the extent any provision of this

Resolution is in conflict with the Series 2011A Ordinance, the Series 2011A Ordinance shall control so long as any Series 2011A Bonds remain outstanding.

Section 1406. Governing Law. The Bond Ordinance, this Resolution and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the Governing Body.

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**ADOPTED AND APPROVED by the Governing Body of the City of Wichita,
Kansas, on May 1, 2012.**

(Seal)

Carl Brewer, Mayor

ATTEST:

By _____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

EXHIBIT A
THE PROJECTS

EXHIBIT B

ADDITIONAL TERMS OF THE SERIES 2012A BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

“Bond Ordinance” shall mean Ordinance No. ____-____ of the City passed by the Governing Body on May 1, 2012, and authorizing and providing for the issuance of the Series 2012A Bonds.

“Underwriter” shall mean _____, _____, _____.

Maturity Schedule. All of the Series 2012A Bonds shall become due or be subject to mandatory redemption on the dates and shall bear interest at the rates per annum as follows:

SERIES 2012A BONDS

Principal or Mandatory Redemption Date	Interest Rate Per Annum
October 1, 2013	%
October 1, 2014	
October 1, 2015	
October 1, 2016	
October 1, 2017	
October 1, 2018	
October 1, 2019	
October 1, 2020	
October 1, 2021	
October 1, 2022	
October 1, 2023	
October 1, 2024	
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	
October 1, 2030	
October 1, 2031	
October 1, 2032	

EXHIBIT C

FINAL SIZING TERMS OF THE SERIES 2012A BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

“**Purchase Price**” for the Series 2012A Bonds shall be the par value of the Series 2012A Bonds, *i.e.*, \$_____, the principal amount of the Series 2012A Bonds, plus accrued interest to the date of delivery, plus a premium of \$_____.

Maturity Schedule. All of the Series 2012A Bonds shall become due in the amounts and on the dates set forth below:

SERIES 2012A SERIAL BONDS

Principal Payment Date	Amount of Principal Payment
October 1, 2013	\$
October 1, 2014	
October 1, 2015	
October 1, 2016	
October 1, 2017	
October 1, 2018	
October 1, 2019	
October 1, 2020	
October 1, 2021	
October 1, 2022	
October 1, 2023	
October 1, 2024	
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	
October 1, 2030	
October 1, 2031	
October 1, 2032	

Deposits. Proceeds of the Series 2012A Bonds shall be deposited as follows:

(1) to the credit of the 2012A Costs of Issuance Account, the sum of
\$_____;

(2) to the credit of the 2012A Bond Reserve Subaccount, the sum of
\$_____;

(3) to the credit of the 2012A Water Projects Fund, the sum of
\$_____; and

(4) to the credit of the 2012A Sewer Projects Fund, the sum of \$_____.

Approved by:

Title:_____
City of Wichita, Kansas

ORDINANCE NO. 49-266

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY; AUTHORIZING THE ISSUANCE OF THE CITY'S WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2012A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,710,000 FOR THE PURPOSE OF PAYING THE COSTS THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City"), is a first class city duly created, organized and existing under the laws of the State of Kansas (the "State"); and

WHEREAS, the City is authorized under the laws of the State to issue general obligation bonds to construct, reconstruct, alter, repair, improve, extend or enlarge its municipal utilities; and

WHEREAS, the Governing Body of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility" (the "Utility"); and

WHEREAS, pursuant to the provisions of the Act (as such term is defined herein) and Ordinance No. 41-934 of the City, adopted January 26, 1993 (the "Series 1993 Ordinance"), the City issued \$76,320,000 original principal amount of Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series 1993, dated February 1, 1993 (the "Series 1993 Bonds"), which Series 1993 Bonds were payable from and had a first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the Act, the Series 1993 Ordinance and various ordinances and resolutions of the City, the City has heretofore issued \$64,930,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); \$29,135,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); \$48,950,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1999 (the "Series 1999 Bonds"); \$7,220,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2000 (the "Series 2000 Bonds"); \$16,325,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2001 (the "Series 2001 Bonds"); \$120,365,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2003 (the "Series 2003 Bonds"); \$45,535,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2005A (the "Series 2005A Bonds"); \$26,695,000 Water and Sewer Utility Refunding

Revenue Bonds, Series 2005B (the “Series 2005B Bonds”); \$46,975,000 Water and Sewer Utility Revenue Bonds, Series 2005C (the “Series 2005C Bonds”); \$51,140,000 Water and Sewer Utility Revenue Bonds, Series 2006 (the “Series 2006 Bonds”); \$29,460,000 Water and Sewer Utility Revenue Bonds, Series 2008A (the “Series 2008A Bonds”); \$119,775,000 Water and Sewer Utility Revenue Bonds, Series 2009A (the “Series 2009A Bonds”); \$12,845,000 Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law) (the “Series 2009B Bonds”); \$31,810,000 Water and Sewer Utility Revenue Bonds, Series 2010A (the “Series 2010A Bonds”); \$17,090,000 Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law) (the “Series 2010B Bonds”); and \$105,325,000 Water and Sewer Utility Refunding Revenue Bonds, Series 2011A (the “Series 2011A Bonds”).

WHEREAS, the Series 1993 Bonds, Series 1997 Bonds, Series 1999, Series 2001 and Series 2003 Bonds are no longer Outstanding; and

WHEREAS, the Outstanding Series 1998 Bonds, Series 2000 Bonds, Series 2005A Bonds, Series 2005B Bonds, Series 2005C Bonds, Series 2006 Bonds, Series 2008A Bonds, Series 2009A Bonds, Series 2009B Bonds, Series 2010A Bonds, Series 2010B Bonds and Series 2011A Bonds (collectively, the “Outstanding Parity Bonds”) are payable from and have a co-equal first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the ordinances of the City authorizing such existing revenue bond indebtedness of the Utility, the City is authorized to issue additional revenue bonds for extensions, enlargements and improvements to the Utility, and such additional revenue bonds may be on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility, provided that certain conditions are satisfied; and

WHEREAS, the Governing Body has heretofore by various resolutions, duly adopted, found and determined it to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend or enlarge the Utility (the “Projects”), and found and determined it to be necessary and advisable to issue revenue bonds pursuant to the provisions of K.S.A. 10-1201 *et seq.*, as amended and supplemented, and Charter Ordinance No. 211 of the City (collectively, the “Act”), in order to pay the costs thereof; and

WHEREAS, the Governing Body caused to be published in the City’s official newspaper, notices of the City’s intention to construct the Projects and issue such revenue bonds determined necessary by the aforesaid resolutions; and within the 15-day period after the publication of each such notice as required by the Act, no written protest was filed in the Office of the City Clerk against the Projects and the issuance of such revenue bonds, and the City is, therefore, now authorized to construct the Projects and to issue said revenue bonds; and

WHEREAS, other than the Outstanding Parity Bonds, the City does not have outstanding any bonds payable from the Net Revenues of the Utility; and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional Revenue bonds on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds; and

WHEREAS, the Governing Body hereby finds it necessary and desirable to provide for the issuance and delivery of the Series 2012A Bonds payable from Net Revenues of the Utility and to authorize and provide for the execution and delivery of certain agreements and supporting documents;

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Definitions. All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Resolution herein referenced.

Section 2. Authorization of and Security for Series 2012A Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following revenue bonds (the "Series 2012A Bonds"): "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2012A," in the aggregate total principal amount not to exceed \$17,710,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Project Costs, fund a bond reserve for the Series 2012A Bonds, and pay Costs of Issuance associated with the Series 2012A Bonds.

The principal amount of the Series 2012A Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source; and the Series 2012A Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to the lien on the Net Revenues of the Outstanding Parity Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2012A Bonds.

The Series 2012A Bonds shall not have any priority with respect to the payment of principal or interest over any revenue bonds of the City hereafter issued in accordance with the provisions of the Resolution (as hereinafter defined) which are on a parity with the Series 2012A Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2012A Bonds.

The Series 2012A Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2012A Bonds.

Section 3. Terms, Details and Conditions of the Bonds. The Series 2012A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the “Resolution”) hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Series 2012A Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Rate Covenant. While any of the Series 2012A Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in this Ordinance and the Resolution, provided, and it is hereby covenanted and agreed that, such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year’s Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of this Ordinance and the Resolution and the terms of the Series 2012A Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City’s obligations with respect to the Payment to the City and to the repayment of Policy Costs then due and owing to the Initial Provider; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year’s Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained herein and the Resolution, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 5. Maintenance of Utility; Collection, Segregation and Disposition of Revenues. The City hereby covenants to operate and maintain the Utility in accordance with the requirements set forth in the Resolution. The City hereby further covenants and agrees that from and after the date of passage of this Ordinance, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City, all as more specifically provided in the Resolution.

Section 6. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2012A Bonds remain outstanding and unpaid, it will not take any

action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Series 2012A Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Series 2012A Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Series 2012A Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Series 2012A Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Series 2012A Bonds to be “arbitrage bonds” within the meaning of Section 103(b)(2) of the Code and to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Series 2012A Bonds for so long as any of the Series 2012A Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Series 2012A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2012A Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Resolution, the Rebate Amount as described in the Tax Compliance Certificate.

Section 7. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days’ written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

Section 8. Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance and the Official Statement relating to the offering and sale of the Series 2012A Bonds. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, City Manager or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Series 2012A Bonds as may be necessary or desirable in order to

carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2012A Bonds and the Official Statement.

Section 9. Effective Date. This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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**PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas
on May 1, 2012.**

(Seal)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, May 1, 2012, of an ordinance entitled:

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY; AUTHORIZING THE ISSUANCE OF THE CITY'S WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2012A, IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,710,000 FOR THE PURPOSE OF PAYING THE COSTS THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2012A Bonds occur on the same day bids are received and to enable the City to deliver the Series 2012A Bonds authorized by said Ordinance on May 24, 2012.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on May 1, 2012.

Carl Brewer, Mayor

Karen Sublett, City Clerk

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL MAY 1, 2012**

- a. Water Distribution System to serve East Lynne Addition (west of 127th St E, north of Harry) (448-90535/735470/470143) Traffic to be maintained during construction using flagpersons and barricades. (District II) - \$116,600.00
- b. Water Distribution System to serve Krug South Addition (south of 21st Street N, west of 143rd Street E) (448-90278/735472/470145) Traffic to be maintained during construction using flagpersons and barricades. (District II) - \$75,000.00

To be Bid: April 20, 2012

PRELIMINARY ESTIMATE of the cost of:
Water Distribution System to serve East Lynne Addition
(west of 127th St E, north of Harry)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

LUMP SUM BID ITEMS

1	Pipe, WL 8"	2,241	lf	26.00	58,266.00
2	Pipe, DI CL 8"	15	lf	70.00	1,050.00
3	Directional Drill 8"	180	lf	72.00	12,960.00
4	Fire Hydrant Assembly	3	ea	2,800.00	8,400.00
5	Concrete Encasement 8", Reinforced	18	lf	75.00	1,350.00
6	Valve Assembly, Blowoff	1	ea	750.00	750.00
7	Valve Assembly, Air Release	1	ea	1,000.00	1,000.00
8	Seeding	1	LS	250.00	250.00
9	Site Clearing	1	LS	1,515.00	1,515.00
10	Site Restoration	1	LS	559.00	559.00

MEASURED QUANTITY BID ITEMS

11	Gravel Driveway Removed & Replaced	97	lf	5.00	485.00
12	AC Pavement Removed & Replaced	80	sy	27.00	2,160.00
13	Tree Removed, Small	1	ea	250.00	250.00
14	Tree Removed, Large	1	ea	500.00	500.00
15	BMP, Silt Fence	50	lf	1.00	50.00
16	BMP, Drop Inlet Protection	2	ea	400.00	800.00

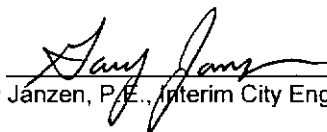
Construction Subtotal**\$90,345.00**

Design Fee	7,500.00
Engineering & Inspection	13,600.00
Administration	3,050.00
Publication	200.00
Easements	75.00
Water Dept	1,830.00

Total Estimated Cost**\$116,600.00**

CITY OF WICHITA)
 STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.


 Gary Janzen, P.E., Interim City Engineer

Sworn to and subscribed before me this _____
 (DATE)

 City Clerk

470143 (735470) 448-90535

Page _____

EXHIBIT _____

To be Bid: April 20, 2012

PRELIMINARY ESTIMATE of the cost of:

Water Distribution System to serve Krug South Addition
(south of 21st Street N, west of 143rd Street E)

All work done and all materials furnished to be in accordance with plans and specifications
on file in the office of the City Engineer.

LUMP SUM BID ITEMS				
1	Pipe, WL 8"	1,682	lf	22.00
2	Fire Hydrant Assembly	3	ea	3,000.00
3	Valve Assembly, 8"	2	ea	1,500.00
4	Valve Assembly, Anchored 8", Special	1	ea	2,500.00
5	Valve Assembly, Blowoff	2	ea	1,000.00
6	Site Clearing	1	LS	1,000.00
7	Site Restoration	1	LS	825.00
8	Seeding, Temporary	1	LS	600.00

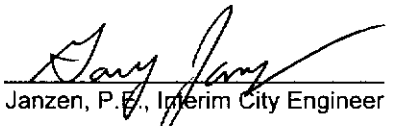
Construction Subtotal	\$55,929.00
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Design Fee	5,500.00
Engineering & Inspection	11,186.00
Administration	2,185.00
Publication	200.00
Contingency	0.00

Total Estimated Cost	\$75,000.00
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CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.


Gary Janzen, P.E., Interim City Engineer

Sworn to and subscribed before me this _____
(DATE)

City Clerk

470145 (735472) 448-90278
Page _____

EXHIBIT _____

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Petitions for Street Paving in Meadowland Addition (north of Kellogg, east of 127th Street East) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

.....

Recommendation: Approve the petitions.

Background: On March 19, 2002 and May 14, 2002, the City Council approved petitions to construct street paving in Meadowland Addition. Some of the street names within the improvement district have changed. The developer has submitted new petitions to update the improvement district description. The signature on the petitions represents 100% of the improvement district.

Analysis: The projects will provide paving improvements for a new commercial development located north of Kellogg, east of 127th Street East.

Financial Considerations: The project budget of \$3,248,000 is unaffected.

Goal Impact: These projects address the Efficient Infrastructure goal by providing paving improvements for a new commercial development.

Legal Considerations: The Law Department has approved the petitions and resolutions as to form.

Recommendation/Action: It is recommended that the City Council approve the petitions, adopt the resolutions, and authorize the necessary signatures.

Attachments: Map, petitions and resolutions.

First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-091

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT IMPROVEMENTS TO INCLUDE FOUR LANE PAVEMENT IMPROVEMENTS WITH CURB AND GUTTER FOR **143RD STREET EAST FROM KELLOGG TO THE NORTH LINE OF MEADOWLAND ADDITION, INCLUDING SOUTHBOUND DUAL TURN LANES AT KELLOGG; A LEFT TURN LANE NORTHBOUND AT LEWIS; DUAL LEFT TURN LANES NORTHBOUND AT WILLOW BROOK; A LEFT TURN LANE SOUTHBOUND AT WILLOWBROOK; A LEFT TURN LANE WESTBOUND ON WILLOWBROOK; AND TRAFFIC SIGNALIZATION SYSTEM AT WILLOWBROOK AND 143RD STREET EAST (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83535** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT IMPROVEMENTS TO INCLUDE FOUR LANE PAVEMENT IMPROVEMENTS WITH CURB AND GUTTER FOR **143RD STREET EAST FROM KELLOGG TO THE NORTH LINE OF MEADOWLAND ADDITION, INCLUDING SOUTHBOUND DUAL TURN LANES AT KELLOGG; A LEFT TURN LANE NORTHBOUND AT LEWIS; DUAL LEFT TURN LANES NORTHBOUND AT WILLOW BROOK; A LEFT TURN LANE SOUTHBOUND AT WILLOWBROOK; A LEFT TURN LANE WESTBOUND ON WILLOWBROOK; AND TRAFFIC SIGNALIZATION SYSTEM AT WILLOWBROOK AND 143RD STREET EAST (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83535** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. **02-235** adopted on **May 14, 2002** is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize to construct pavement improvements to include four lane pavement improvements with curb and gutter for **143rd Street East from Kellogg to the north line of Meadowland Addition, including southbound dual turn lanes at Kellogg; a left turn lane northbound at Lewis; dual left turn lanes northbound at Willowbrook; a left turn lane southbound at Willowbrook; a left turn lane westbound on Willowbrook; and traffic signalization system at Willowbrook and 143rd Street East (north of Kellogg, east of 127th Street East) 472-83535** Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to **Six Hundred Ninety-Four Thousand Dollars (\$694,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **April 1, 2012**, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MEADOWLAND ADDITION

Lots 1 and 2, Block A
Lots 1 and 2, Block B
Lots 1 through 6, Block C
Lots 1 through 4, Block D

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 and 2, Block D, MEADOWLAND ADDITION, shall each pay 1/30 of the total cost of the improvements, Lots 1 and 2, Block A, Lots 1 and 2, Block B, Lots 1 and 2, Block D, Lots 4, 5, and 6, Block C, and Lots 3 and 4, Block D, MEADOWLAND ADDITION, shall each pay 2/30 of the total cost of the improvements, and Lot 3, Block C, MEADOWLAND ADDITION, shall each pay 6/30 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-092

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING PAVEMENT ON SPRING HOLLOW AND MORNINGSIDE FROM THE NORTH LINE OF WILLOWBROOK TO THE WEST LINE OF 143RD STREET EAST, ON WILLOWBROOK FROM THE WEST LINE OF SPRING HOLLOW, EAST TO THE WEST LINE OF LOT 3, BLOCK C, AND ON SPRING HOLLOW COURT FROM THE WEST LINE OF SPRING HOLLOW, WEST TO AND INCLUDING THE CUL-DE-SAC (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83520 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON SPRING HOLLOW AND MORNINGSIDE FROM THE NORTH LINE OF WILLOWBROOK TO THE WEST LINE OF 143RD STREET EAST, ON WILLOWBROOK FROM THE WEST LINE OF SPRING HOLLOW, EAST TO THE WEST LINE OF LOT 3, BLOCK C, AND ON SPRING HOLLOW COURT FROM THE WEST LINE OF SPRING HOLLOW, WEST TO AND INCLUDING THE CUL-DE-SAC (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83520 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 02-169 adopted on March 19, 2002 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Spring Hollow and Morningside from the north line of Willowbrook to the west line of 143rd Street East, on Willowbrook from the west line of Spring Hollow, east to the west line of Lot 3, Block C, and on Spring Hollow Court from the west line of Spring Hollow, west to and including the cul-de-sac (north of Kellogg, east of 127th Street East) 472-83520 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to **Eight Hundred Forty-Six Thousand Dollars (\$846,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **April 1, 2012**, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MEADOWLAND ADDITION

Lot 1, and Lots 3 through 6, Block C

Lots 1 through 4, Block D

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 1 and Lots 4 through 6, Block C, and Lots 1 and 2, Block D, MEADOWLAND ADDITION, shall each pay 1/14 of the total cost of the improvements, and Lot 3, Block C, MEADOWLAND ADDITION, shall pay 2/14 of the total cost of the improvements, and Lots 3 and 4, Block D, MEADOWLAND ADDITION, shall each pay 3/14 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-093

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING PAVEMENT ON **WILLOWBROOK CIRCLE** FROM THE WEST LINE OF SPRING HOLLOW, WEST TO AND INCLUDING THE CUL-DE-SAC (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83521 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON **WILLOWBROOK CIRCLE** FROM THE WEST LINE OF SPRING HOLLOW, WEST TO AND INCLUDING THE CUL-DE-SAC (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83521 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 02-170 adopted on March 19, 2002 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on **Willowbrook Circle** from the west line of Spring Hollow, west to and including the cul-de-sac (north of Kellogg, east of 127th Street East) 472-83521 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to **One Million Forty-Two Thousand Dollars (\$1,042,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **April 1, 2012**, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MEADOWLAND ADDITION
Lots 5 through 11, Block D

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 5 through 9, Block D, MEADOWLAND ADDITION, shall each pay 1/10 of the total cost of the improvements, and Lot 10, Block D, MEADOWLAND ADDITION, shall pay 3/10 of the total cost of the improvements, and Lot 11, Block D, MEADOWLAND ADDITION, shall pay 2/10 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-094

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING PAVEMENT ON **WILLOWBROOK** FROM THE WEST LINE OF LOT 3, BLOCK C, TO THE WEST LINE OF 143RD STREET EAST, AND ON **LEWIS** FROM THE EASTERLY LINE OF WILLOWBROOK, EAST TO THE WEST LINE OF 143RD STREET EAST (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83523 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON **WILLOWBROOK** FROM THE WEST LINE OF LOT 3, BLOCK C, TO THE WEST LINE OF 143RD STREET EAST, AND ON **LEWIS** FROM THE EASTERLY LINE OF WILLOWBROOK, EAST TO THE WEST LINE OF 143RD STREET EAST (NORTH OF KELLOGG, EAST OF 127TH STREET EAST) 472-83523 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 02-171 adopted on March 19, 2002 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on **Willowbrook** from the west line of Lot 3, Block C, to the west line of 143rd Street East, and on **Lewis** from the easterly line of Willowbrook, east to the west line of 143rd Street East (north of Kellogg, east of 127th Street East) 472-83523 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to **Six Hundred Sixty-Six Thousand Dollars (\$666,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **April 1, 2012**, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MEADOWLAND ADDITION

Lot 1 and 2, Block A

Lots 1 and 2, Block B

Lots 2 and 3, Block C

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 and 2, Block A, Lots 1 and 2, Block G, and Lot 2, Block C, MEADOWLAND ADDITION, shall each pay 1/8 of the total cost of the improvements, and Lot 3, Block C, MEADOWLAND ADDITION, shall pay 3/8 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

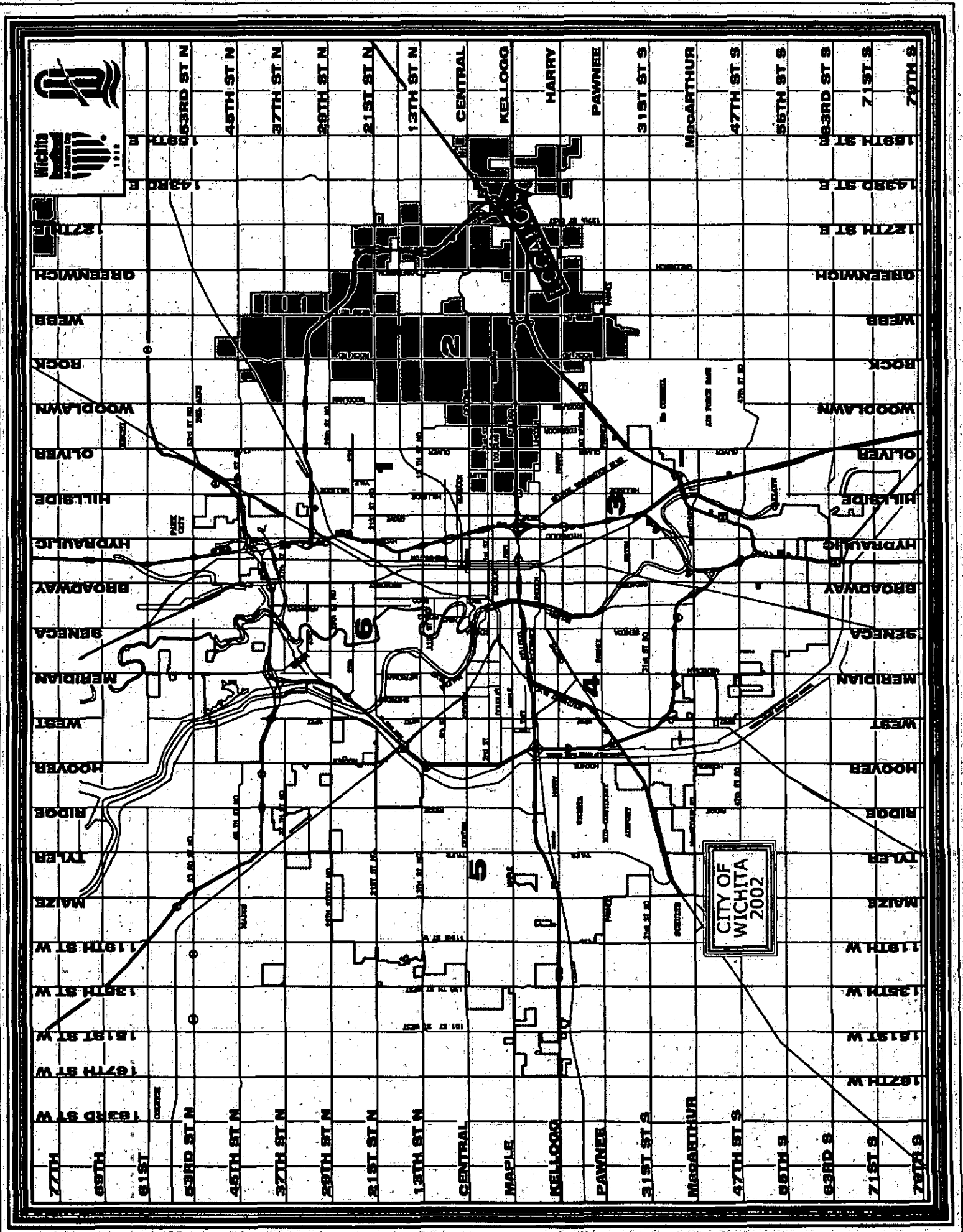
ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW



PAVING PETITION

(143rd St. East)

REVISED
PROJECT #472-83535

RECEIVED

MAR 26 '12

CITY CLERK OFFICE

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of
Lots, Parcels, and Tracts of real property described as follows:

MEADOWLAND ADDITION

Lots 1 and 2, Block A
Lots 1 and 2, Block B
Lots 1 through 6, Block C
Lots 1 through 4, Block D

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as
follows:

- (a) That there be constructed pavement improvements to include four lane pavement improvements with curb and gutter for 143rd St. East from Kellogg to the North line of Meadowland Addition, including southbound dual turn lanes at Kellogg; a left turn lane northbound at Lewis; dual left turn lanes northbound at Willowbrook; a left turn lane southbound at Willowbrook; a left turn lane westbound on Willowbrook; and Traffic Signalization system at Willowbrook and 143rd St. East with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.
- (b) That the estimated and probable cost of the foregoing improvement being Six Hundred Ninety-Four Thousand Dollars (\$694,000), with 100 percent payable by the improvement district. Said estimated cost as above setforth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after April 1, 2012.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.


- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 and 2, Block D, MEADOWLAND ADDITION shall each pay 1/30 of the total cost of the improvements, Lots 1 and 2, Block A, Lots 1 and 2, Block B, Lots 1 and 2, Block C, Lots 4, 5, and 6, Block C, and Lots 3 and 4, Block D, MEADOWLAND ADDITION, shall each pay 2/30 of the total cost of the improvements, and Lot 3, Block C, MEADOWLAND ADDITION, shall pay 6/30 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.
3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.
4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the

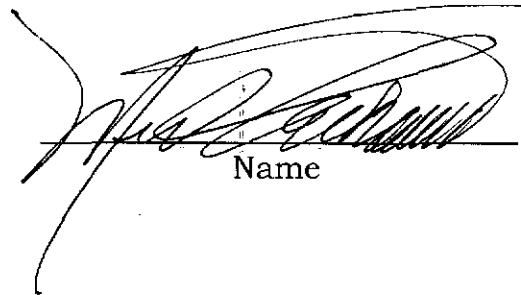
proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>MEADOWLAND ADDITION</u>	Aetna Trust UTA	3/19/12
Lots 1 and 2, Block A	dated August 24, 1966	
Lots 1 and 2, Block B		
Lots 1 through 6, Block C	By: 	
Lots 1 through 4, Block D	William E. Lusk, Jr., Trustee	

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

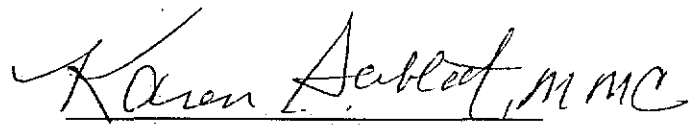

Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 26 day of March
2012.




Deputy City Clerk

W
RECEIVED

MAR 26 '12

PAVING PETITION
PHASE II

REVISED
PROJECT #47283620 CITY CLERK OFFICE

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

MEADOWLAND ADDITION

Lot 1, and Lots 3 through 6, Block C
Lots 1 through 4, Block D

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- (a) That there be constructed pavement on Spring Hollow and Morningside from the north line of Willowbrook to the west line of 143rd Street East, on Willowbrook from the west line of Spring Hollow, east to the west line of Lot 3, Block C, and on Spring Hollow Court from the west line of Spring Hollow, west to and including the cul-de-sac.

That said pavement between aforesaid limits be constructed for a width of thirty-two (32) feet from gutter line to gutter line, and each gutter to be two (2) feet in width, making a total roadway width of thirty-six (36) feet with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.

- (b) That the estimated and probable cost of the foregoing improvement being Eight Hundred Forty-Six Thousand Dollars (\$846,000), with 100 percent payable by the improvement district. Said estimated cost as above setforth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after April 1, 2012.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (c) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 1 and Lots 4 through 6, Block C, and Lots 1 and 2, Block D, MEADOWLAND ADDITION, shall each pay 1/14 of the total cost of the improvements, Lot 3, Block C, MEADOWLAND ADDITION, shall pay 2/14 of the total cost of the improvements, and Lots 3 and 4, Block D, MEADOWLAND ADDITION, shall each pay 3/14 of the total cost of the improvements.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

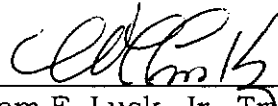
2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the

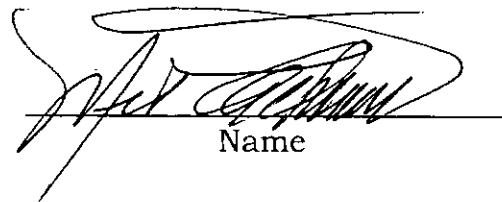
proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>MEADOWLAND ADDITION</u> Lot 1 and Lots 3 through 6, Block C Lots 1 through 4, Block D	Aetna Trust UTA dated August 24, 1966 By:  William E. Lusk, Jr., Trustee	3/19/12

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.


Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 26 day of March
2012.




Deputy City Clerk

W
RECEIVED

MAR 26 '12

PAVING PETITION
PHASE III

REVISED
PROJECT #47283521 **CITY CLERK OFFICE**

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

MEADOWLAND ADDITION
Lots 5 through 11, Block D

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

- (a) That there be constructed pavement on Willowbrook Circle from the west line of Spring Hollow, west to and including the cul-de-sac.

That said pavement between aforesaid limits be constructed for a width of thirty-two (32) feet from gutter line to gutter line, and each gutter to be two (2) feet in width, making a total roadway width of thirty-six (36) feet with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.

- (b) That the estimated and probable cost of the foregoing improvement being One Million Forty-Two Thousand Dollars (\$1,042,000), with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after April 1, 2012.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be

assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 5 through 9, Block D, MEADOWLAND ADDITION, shall each pay 1/10 of the total cost of the improvements, Lot 10, Block D, MEADOWLAND ADDITION, shall pay 3/10 of the total cost of the improvements, and Lot 11, Block D, MEADOWLAND ADDITION, shall pay 2/10 of the total cost of the improvements.

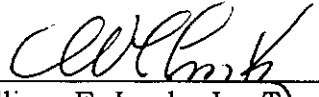
Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

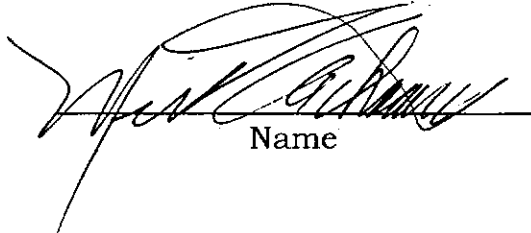
4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>MEADOWLAND ADDITION</u> Lots 5 through 11, Block D	Aetna Trust UTA dated August 24, 1966 By:  William E. Lusk, Jr., Trustee	3/19/12

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.


Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 26 day of March
2012.




~~Deputy~~ City Clerk

MAR 26 '12

PAVING PETITION
PHASE I

RECEIVED

REVISED
PROJECT #472-83523

To the Mayor and City Council
 Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

MEADOWLAND ADDITION

Lots 1 and 2, Block A
 Lots 1 and 2, Block B
 Lots 2 and 3, Block C

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

(North of Kellogg,
 East of 127th St. East)

- (a) That there be constructed pavement on Willowbrook from the west line of Lot 3, Block C, to the west line of 143rd Street East, and on Lewis from the easterly line of Willowbrook, east to the west line of 143rd Street East.

That said pavement between aforesaid limits be constructed for a width of thirty-two (32) feet from gutter line to gutter line, and each gutter to be two (2) feet in width, making a total roadway width of thirty-six (36) feet with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.

- (b) That the estimated and probable cost of the foregoing improvement being Six Hundred Sixty-Six Thousand Dollars (\$666,000), with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after April 1, 2012.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes

building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 and 2, Block A, Lots 1 and 2, Block B, and Lot 2, Block C, MEADOWLAND ADDITION, shall each pay 1/8 of the total cost of the improvements, and Lot 3, Block C, MEADOWLAND ADDITION, shall pay 3/8 of the total cost of the improvements.

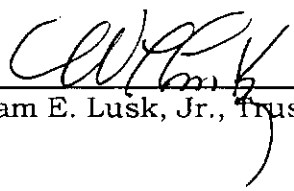
Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

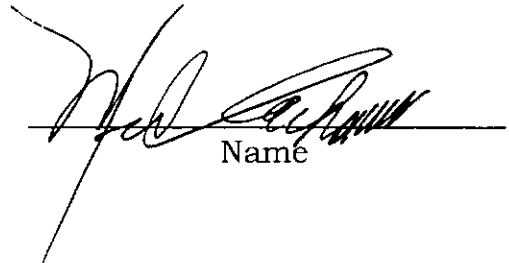
4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>MEADOWLAND ADDITION</u>	Aetna Trust UTA	3/19/12
Lots 1 and 2, Block A	dated August 24, 1966	
Lots 1 and 2, Block B		
Lots 2 and 3, Block C		
	By: 	
	William E. Lusk, Jr., Trustee	

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.


Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 26 day of March
2012.




Deputy City Clerk

PARTIAL STATEMENTS OF COST:

- a. Partial Estimate of Cost for improving **13th Street North, 135th Street West to Azure (Design)** – Estimated Cost - \$41,500; less financing previously issued - \$31,500. Financing to be issued at this time - \$10,000. (706913/472-84131/204-379).
- b. Partial Estimate of Cost for **47th Street South, Meridian to Seneca (Design and Construction)** – Estimated Cost - \$738,500; less financing previously issued - \$238,500. Financing to be issued at this time - \$500,000. (706935/472-84296/205-401).
- c. Partial Estimate of Cost for **Int. Transportation System Traffic Signals (Design and Construction)** – Estimated Cost - \$3,210,411; less State operating grants - \$870,708; less Federal to State revenues - \$1,374,687; less other County aid - \$5,316; less financing previously issued - \$559,700. Financing to be issued at this time - \$400,000. (706960/472-84446/206-426).
- d. Partial Estimate of Cost for **17th and Hillside Intersection (Construction)** – Estimated Cost - \$3,600,111; less Federal to State revenues - \$1,999,500; less financing previously issued - \$1,430,611. Financing to be issued at this time - \$170,000. (706996/472-84766/208-461).
- e. Partial Estimate of Cost for **2009 Street Rehab Program (Construction)** – Estimated Cost - \$466,993; less Federal to State revenues - \$178,468; less financing previously issued - \$138,525. Financing to be issued at this time - \$150,000. (707006/472-84815/209471).
- f. Partial Estimate of Cost for **Harry and Broadway Intersection (Design and Construction)** – Estimated Cost - \$429,027; less Federal to State revenues - \$0; less financing previously issued - \$79,027. Financing to be issued at this time - \$350,000. (707013/472-84880/210-478).
- g. Partial Estimate of Cost for **Pawnee and Broadway Intersection (Design and Construction)** – Estimated Cost - \$180,700; less financing previously issued - \$30,700. Financing to be issued at this time - \$150,000. (707014/472-84881/210-479).
- h. Partial Estimate of Cost for **2010 Street Rehab Program (Construction)** – Estimated Cost - \$566,494; less Federal to State revenues - \$163,793; less financing previously issued - \$2,701. Financing to be issued at this time - \$400,000. (707016/472-84897/210-481).
- i. Partial Estimate of Cost for **Lincoln Street Bridge & Dam at Ark River (Construction)** - Estimated Cost - \$8,006,868; less State operating grants - \$35,000; less Federal to State revenues - \$2,828,717; less financing previously issued - \$2,143,151. Financing to be issued at this time - \$3,000,000. (715724/472-84883/249-140).
- j. Partial Estimate of Cost for **Broadway Bridge at 34th Street South (Construction)** – Estimated Cost - \$1,500,000; less financing previously issued - \$0. Financing to be issued at this time - \$1,500,000. (715727/472-84965/249-143).

OCA #706913
472-84131
204-379

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving 13th Streeet North, 135th Street West to Azure
(Design):

Estimated Cost	\$41,500
Less Financing Previously Issued	<u>-\$31,500</u>
Financing to be issued at this time	\$10,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to
be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$10,000
(July 2012)

OCA # 706935
472-84296
205-401

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving 47th Street South, Meridian to Seneca
(Design and Construction):

Estimated Cost	\$738,500
Less Financing Previously Issued	<u>-\$238,500</u>

Financing to be issued at this time	\$500,000
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STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to
be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$500,000
(July 2012)

OCA #706960
472-84446
206-426

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving Int Transportation System Traffic Signals
(Design and Construction):

Estimated Cost	\$3,210,411
Less State Operating Grants	-\$870,708
Less Federal to State Revenues	-\$1,374,687
Less other County aid	-\$5,316
Less Financing Previously Issued	<u>-\$559,700</u>

Financing to be issued at this time \$400,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$400,000
(July 2012)

OCA #706996
472-84766
208-461

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving 17th and Hillside Intersection
(Construction):

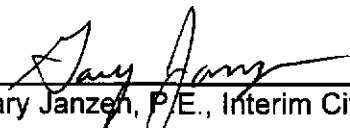
Estimated Cost	\$3,600,111
Less Federal to State revenues	-\$1,999,500
Less Financing Previously Issued	<u>-\$1,430,611</u>

Financing to be issued at this time	\$170,000
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STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$170,000
(July 2012)

OCA #707006
472-84815
209-471

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving 2009 Street Rehab Program
(Construction):

Estimated Cost	\$466,993
Less Federal to State Revenues	-\$178,468
Less Financing Previously Issued	<u>-\$138,525</u>
Financing to be issued at this time	\$150,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$150,000
(July 2012)

OCA #707013
472-84880
210-478

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving Harry and Broadway Intersection
(Design and Construction):

Estimated Cost	\$429,027
Less Federal to State Revenues	\$0
Less Financing Previously Issued	<u>-\$79,027</u>
Financing to be issued at this time	\$350,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$350,000
(July 2012)

OCA #707014
472-84881
210-479

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

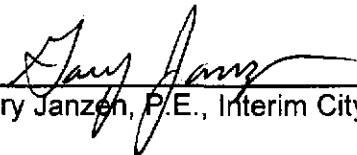
A Partial Estimate of Cost for improving Pawnee and Broadway Intersection
(Design and Construction):

Estimated Cost	\$180,700
Less Financing Previously Issued	<u>-\$30,700</u>
Financing to be issued at this time	\$150,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$150,000
(July 2012)

OCA #707016
472-84897
210-481

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST


A Partial Estimate of Cost for 2010 Street Rehab Program
(Construction):

Estimated Cost	\$566,494
Less Federal to State revenues	-\$163,793
Less Financing Previously Issued	<u>-\$2,701</u>
Financing to be issued at this time	\$400,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$400,000
(July 2012)

OCA #715724
472-84883
249-140

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving Lincoln Bridge, Dam at Ark River
(Construction):

Estimated Cost	\$8,006,868
Less State Operating Grants	-\$35,000
Less Federal to State Revenues	-\$2,828,717
Less Financing Previously Issued	<u>-\$2,143,151</u>
Financing to be issued at this time	\$3,000,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E. Interim City Engineer

City: \$3,000,000
(July 2012)

OCA #715727
472-84965
249-143

City Council
Wichita, Kansas

PARTIAL ESTIMATE OF COST

A Partial Estimate of Cost for improving Broadway Bridge at 34th Street South
(Construction):

Estimated Cost	\$1,500,000
Less Federal to State Revenues	\$0
Less Financing Previously Issued	<u>\$0</u>
Financing to be issued at this time	\$1,500,000

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

I, Gary Janzen, Interim City Engineer, City of Wichita, Kansas, do hereby certify the above to be a true and correct amount of funds to be issued in connection with the aforesaid project.

Dated this 19th day of April, 2012



Gary Janzen, P.E., Interim City Engineer

City: \$1,500,000
(July 2012)

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Hold Harmless Agreement (Easement Encroachment) (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the hold harmless agreement.

Background: The owner of the commercial property at 7331 West 33rd Street North has an existing encroachment of several commercial condensing units on slab, located over a public water line in a 10 foot drainage and utility easement on his property.

Analysis: The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public water line within the easement, and from claims resulting from replacement or upgrade of City utilities in the easement. The owner waives all rights of action in law arising out of the encroachments into the easement.

Financial Considerations: There is no cost to the City.

Goal Impact: The hold harmless agreement addresses the Ensure Efficient Infrastructure goal by maintaining and protecting the public water system.

Legal Considerations: The Law Department has approved the agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachment: Hold harmless agreement.

HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 29th day of March, 2012, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND MARK D. ISLEY, hereinafter called "OWNER"

WITNESSETH:

Whereas, the public has been granted a Drainage and Utility Easement 10 feet in width, being the east 10 feet of the following described tract:

That part of Lot 10, Block A, Ridge Port Commercial Park, Wichita, Sedgwick County, Kansas: Commencing at the most northeasterly corner of said Lot 10; thence S0°08'04"W along the east line of Lot 10, 264 feet to the POINT OF BEGINNING; thence N89°51'56"W, 120 feet; thence S0°08'04"W, 116.35 feet; thence S39°27'17"E, 188.3 feet to a point on the east line of said Lot 10; thence N0°08'04"E along the east line of Lot 10, 261.46 feet to the point of beginning. (Building address is 7331 W. 33rd Street North)

and

Whereas, the Owner desires to occupy and construct improvements over the following described section of said easement, to wit; a concrete pad with three condensing units, hereinafter referred to as **Tract "A"** (see attached Exhibit showing proposed encroachment and location).

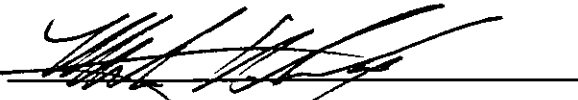
NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

- (1) The City hereby agrees to permit the Owner to occupy improvements, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement.
- (2) The Owner agrees that it will not begin construction of the improvement on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvement.
- (3) In the event of an emergency or situation in which extensive notice is not feasible, that requires a repair and/or maintenance of the water line or other public utility within the easement, and the same repair and/or maintenance is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. In any other event that a water line or other public utility within the easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner shall be obligated to either (a) allow the City to remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement; (b) remove the said encroachment and clear the easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the public utility. After being notified by the City of the planned repair, maintenance or construction, the Owner shall have thirty (30) days to notify the City of its option and, if removal of the structure was selected, to complete the removal. If the Owner fails to remove the structure or agree to pay the costs of tunneling under the encroachment within thirty (30) days, the City may remove or damage any structure on the easement, with the Owner

being responsible to pay the costs to replace that portion of the structure within the easement. The time to select an option or remove the structure may be extended by the City in writing.

- (4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner to Mark D. Isley. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.
- (5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the utility within the above described easement.
- (6) This agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.
- (7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.
- (8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.




Mark D. Isley, Owner

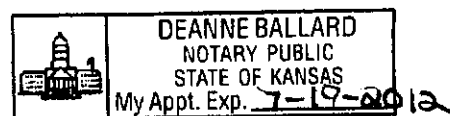
STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 29 day of March, 2012, before me, a Notary Public, in and fore said county and state, came Mark D. Isley, to me personally known to be the same person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.



Notary Public
My Commission Expires: 7-19-2012



CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor
City

ATTEST:

City Clerk

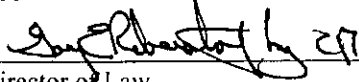
STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Notary Public
My Commission Expires: _____

Approved as to Form



Director of Law

TRACT A

7331 W. 33rd Street North

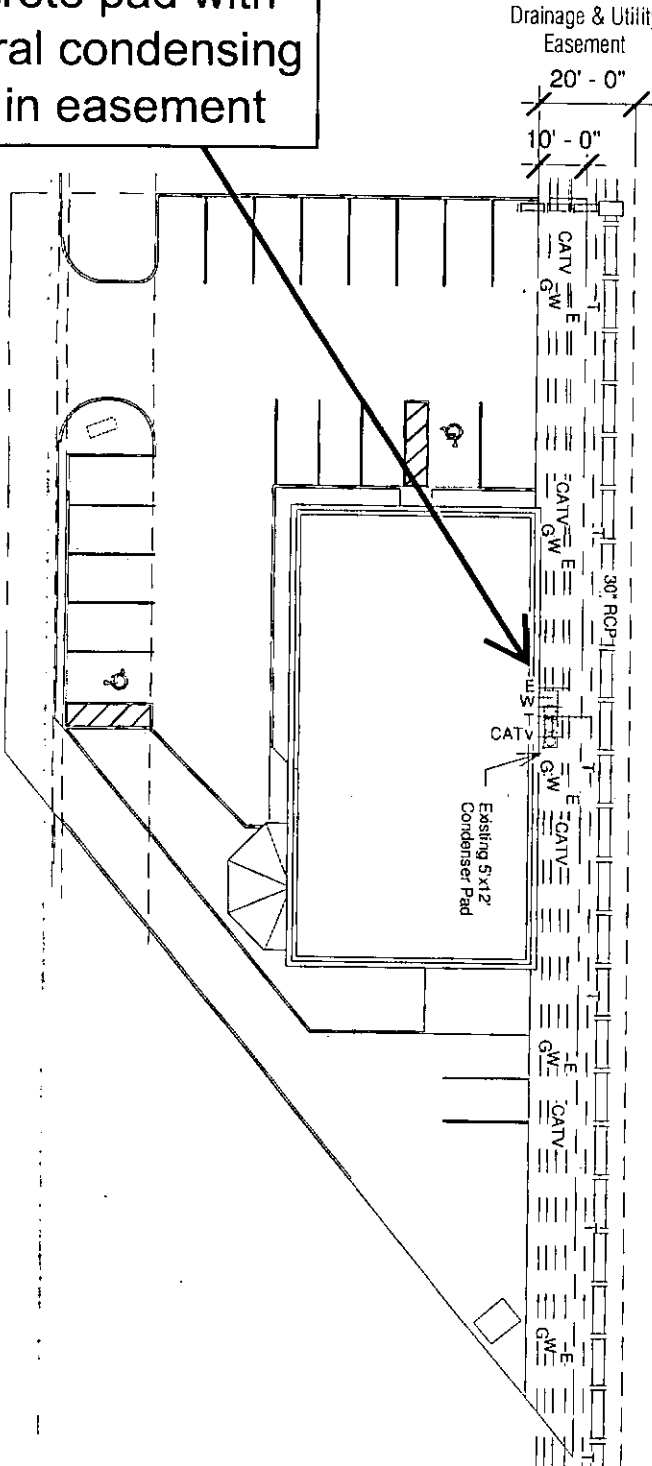
ENCROACHMENT:
Concrete pad with
several condensing
units in easement

Drainage & Utility
Easement

20' - 0"

10' - 0"

LEGAL DESCRIPTION
PARCEL G: THAT PART OF LOT 10, BLOCK A, RIDGE PORT COMMERCIAL PARK, WICHITA, SEDGWICK COUNTY, KANSAS DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST NORTH EASTERLY CORNER OF SAID LOT 10: THENCE S00°08'04"W, ALONG THE EAST LINE OF SAID LOT 10, 264.00 FEET FOR A POINT OF BEGINNING: THENCE N89°51'56"W, 120.00 FEET: THENCE S00°08'04"W, 116.35 FEET: THENCE S39°27'17"E, 188.30 FEET TO A POINT ON THE EAST LINE OF SAID LOT 10: THENCE N00°08'04"E, ALONG THE EAST LINE OF SAID LOT 10, 261.46 FEET TO THE POINT OF BEGINNING.

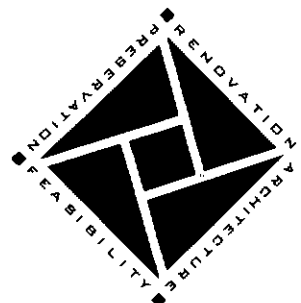


A ARCHITECTURAL SITE PLAN
1" = 40'-0"

**SUITE 200 TENANT FINISH FOR FRANK SABALA
GROUP BENEFIT SPECIALISTS BUILDING**

7331 W 33rd St N
Wichita, KS 67205

**RANDAL STEINER
ARCHITECT, P.A.**
333 N. WARD
WICHITA, KS 67203
PHONE: 316.265.3222
FAX: 316.265.4648
RBAARCHITECT.COM



Issued
Mar 23, 2012
Revised 3/26/2012

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: Supplemental Design Agreements for Water Main Replacement Projects in Eastborough South and 3rd Street North from the Central Rail Corridor to I-135 (Eastborough and District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the supplemental agreements.

Background: On November 7, 2006, the City Council approved agreements with Mid Kansas Engineering Consultants, Inc. (MKEC) to prepare the design of water main replacement projects for Eastborough South and 3rd Street North from the Central Rail Corridor to I-135. The section of the 3rd Street project between the Central Rail Corridor and Wabash was built with the Douglas Outfall Project.

Analysis: The supplemental agreement for Eastborough will provide design services for two additional mains that now should be replaced in Lynnwood and Woodlawn. After re-evaluation of the proposed phasing boundary, it was determined that these two lines could be more economically replaced with this project, and would minimize the overall impact to the neighborhood. Both agreements will provide design services to renew permits, redistribute the plans to utilities, and update the plans to current standards due to delays in bidding the projects due to lack of funding.

Financial Considerations: Payments to MKEC for these supplement agreements are on a lump sum basis in the amount of \$8,950 for Eastborough and \$4,090 for 3rd Street. Both agreements will be funded 100% by the Water Utility, and funding is available within each respective project budget. With these supplemental agreements, the total design fee will be \$67,815 for Eastborough and \$35,545 for 3rd Street.

Goal Impact: These agreements address the Efficient Infrastructure goal by providing the engineering design services needed for the construction of two water main replacement projects.

Legal Considerations: The agreements have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the supplemental agreements and authorize the necessary signatures.

Attachments: Supplemental agreements.

SUPPLEMENTAL AGREEMENT NO. 1
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED NOVEMBER 7, 2006
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
MKEC ENGINEERING CONSULTANTS, INC.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated November 7, 2006) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to the Eastborough South Water Main Replacements (448-90213).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Additional Scope of Services
(see Exhibit "A-1")

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by \$8,950.00.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY by 30 days from NTP; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this ____ day of _____, 2012.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, City Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

MKEC ENGINEERING CONSULTANTS, INC.

(Name and Title)
Jay Anglemyer, P.E.

ATTEST:

MKEC ENGINEERING CONSULTANTS, INC.

Kansas City Oklahoma City Wichita

March 19, 2012

Mr. Shawn Mellies, P.E.
Staff Engineer, City of Wichita
455 N. Main, 7th Floor
Wichita, KS 67202

Reference: Proposal for Supplemental Design Fees
Project No. 448-90213: Water Main Replacements, Eastborough South

Dear Mr. Mellies:

Per the City's request, MKEC agrees to a change in design scope for the project noted above.

In general, the current contract scope is to design water main replacements to serve an area bound by Kellogg and Douglas, east of Woodlawn in the City of Eastborough. The current contract scope was fulfilled by MKEC in 2009. Construction of the project has not occurred but the City plans construct the project in 2012. As a result of the three-year time lapse between design completion and construction, the City desires to have MKEC perform additional design services to modify and update the plans in preparation for the proposed 2012 construction.

Specific supplemental design tasks requested by the City that are not part of the original project scope are outlined below followed by the proposed hours and design fee to complete the task.

- Survey, design and plan preparation for two new water lines in Linwood and Woodlawn not included in the previous plan scope
Hours - 82, Fee - \$6,330.00
- Update standard drawings, bid items, and construction cost estimate and make minor plan edits based on recent reviews by City staff
- Send plan to utility companies and coordinate conflicts and relocations, if any
- Send plans to City of Eastborough for a review and coordinate construction issues
Hours - 34, Fee - \$2,620.00

MKEC proposes a total supplemental lump-sum design fee of \$8,950.00 to perform the design of the revised scope.

Providing Professional Service Since 1982

411 NORTH WEBB ROAD WICHITA, KS 67206 T. 316.684.9600 F. 316.684.5100

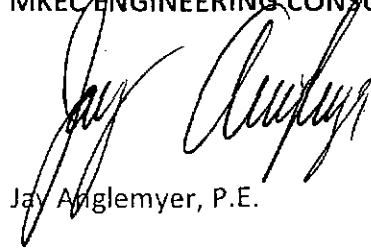
Mr. Shawn Mellies, P.E.
March 19, 2012

Page 2

MKEC is eager to resume work on this project. If you have any questions or concerns about this proposal, please feel free to contact me. This project will be a nice improvement for the residents of the City of Eastborough.

Thank you for your consideration,

MKEC ENGINEERING CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read "Jay Anglemeyer", is written over the printed name.

Jay Anglemeyer, P.E.

JRA/cw

SUPPLEMENTAL AGREEMENT NO. 1
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED NOVEMBER 7, 2006
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
MKEC ENGINEERING CONSULTANTS, INC.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated November 7, 2006) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to the 3rd Street Water Main Replacement (448-90217).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Additional Scope of Services
(see Exhibit "A-1")

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by \$4,090.00.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY by 30 days from NTP; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2012.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, City Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

MKEC ENGINEERING CONSULTANTS, INC.

(Name and Title)
Jay Anglemyer, P.E.

ATTEST:

CITY OF WICHITA
City Council Meeting
May 1, 2012

TO: City Council

SUBJECT: Partial Acquisition of 3008 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. A sliver of right-of-way is necessary from the improved property at 3008 East 13th Street. In addition, a temporary easement at the driveway is also required. The right-of-way consists of 51 square feet, and the temporary easement consists of 185 square feet.

Analysis: The owner rejected the estimated appraised offer of \$100. After negotiation, the owner agreed to a purchase price of \$250. The purchase price includes compensation for the owner to relocate the wooden fence along the road right-of-way.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$425 is requested. This includes \$250 for the acquisition, \$175 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the real estate purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement; 2) Approve the budget and; 3) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2012 by and between Oliver C. K. Grier and Karen Grier, husband and wife, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by warranty deed for the construction and maintenance of road right-of-way and other infrastructure improvements within, upon and under the following described tract, to wit:

Attached as EXHIBIT A

Together with a Temporary Easement during construction abutting public roadway over and across the following described tract, to wit:

Attached as EXHIBIT B

2. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to the Buyer the above-described tract, the sum of Two Hundred Fifty Dollars and No/100 (\$250) in the manner following, to-wit: cash.
3. A complete abstract of title certified to date, or a title insurance company's commitment to insure the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence and that this transaction shall be consummated on or before May 31, 2012.
6. The Seller further agrees to convey the above-described tract with all the improvements located thereon except for personal property and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.
7. Buyer and Seller agree that the Seller is eligible for certain relocation benefits separate from the purchase of the subject property.
8. Possession to be given to Buyer on or before closing date.
9. In the event an Owners title insurance policy is furnished, the total cost of the

commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

10. Site Assessment

A. At any time prior to the closing of this agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the Property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the Property, the buyer shall have the right to void this agreement upon notice to the seller, in which event neither party shall be under any further obligation to the other, with the exception that seller shall return to buyer any deposit made hereunder. The buyer or its agents shall have the right, without the obligation, to enter upon the Property prior to closing to undertake an environmental site assessment or testing of the Property, at the buyer's sole expense.

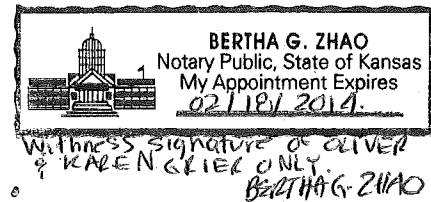
B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:


Oliver C. K. Grier


Karen Grier



BUYER:

By Direction of the City Council

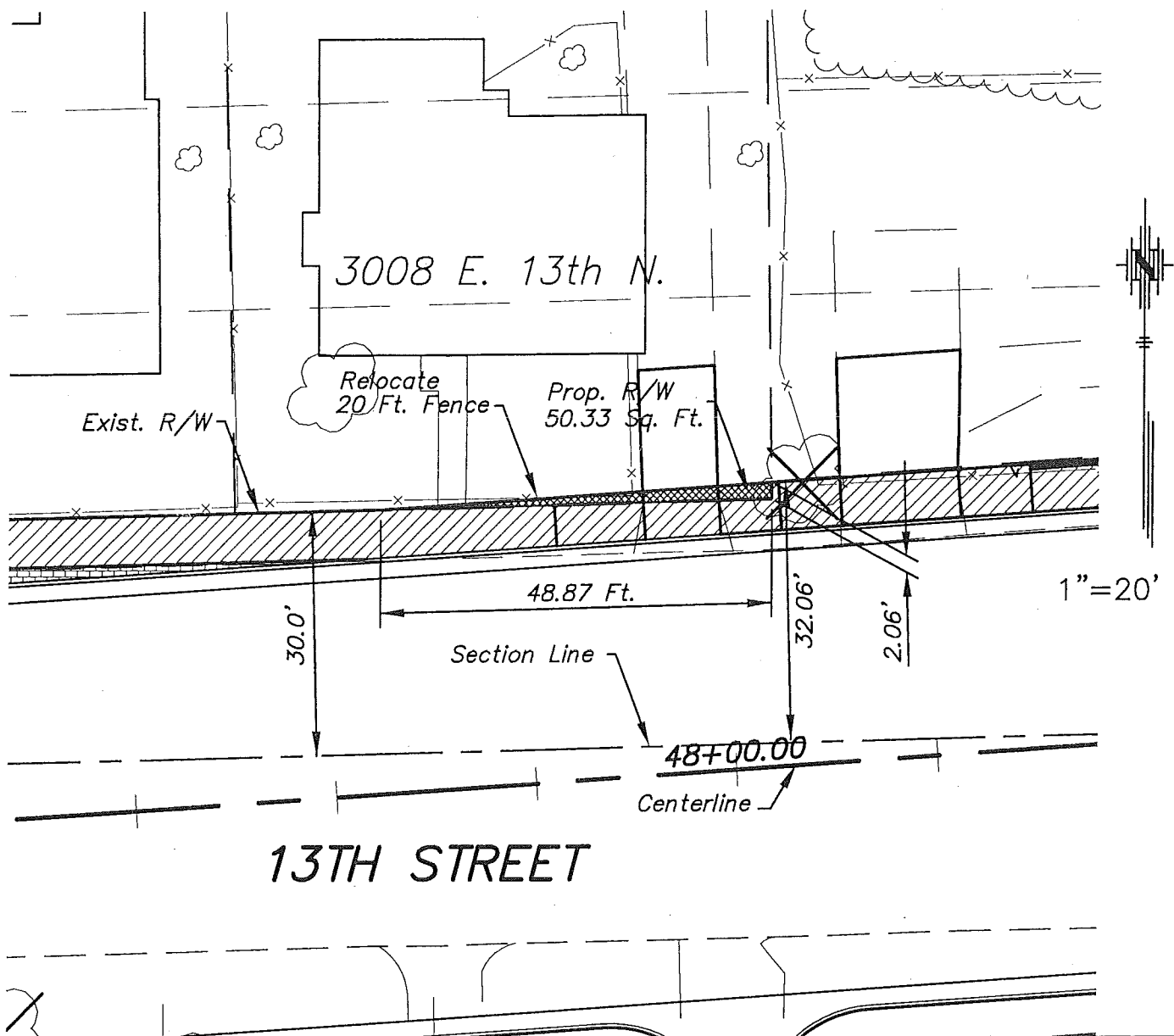
ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law



PROPOSED R/W ACQ. LEGAL:

A tract of land in the East one-half (1/2) of Lot 2 on Mt. Olive, now Chautauqua Avenue, Girard Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

A triangular tract beginning at the Southeast corner of said Lot 2 as platted in Girard Addition to Wichita, Sedgwick County, Kansas; thence West along the South line of said Lot 2 for a distance of 48.87 feet; thence east northeast to a point on the East line of said Lot 2, said point being 2.06 feet North of the said Southeast corner of said Lot 2; thence South along the said East line of said Lot 2 for a distance of 2.06 feet to the point of beginning.

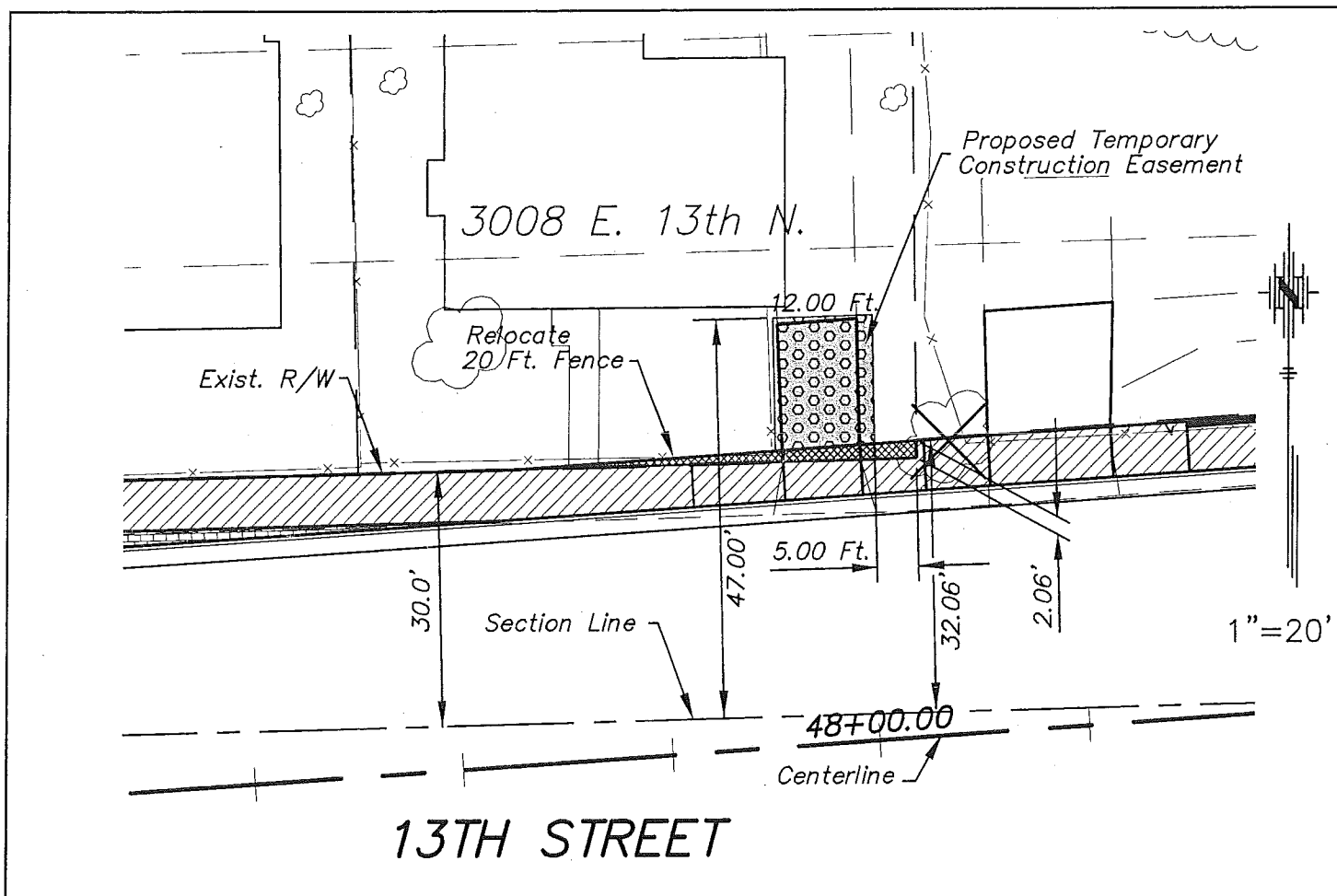
Property Owner Name:
GRIER OLIVER C K & KAREN

TAX KEY #: C 03385
R/W ACQUISITION SIZE: 51 sq. ft.

TRACT MAP



PROPOSED R/W ACQUISITION



PROPOSED TEMPORARY CONSTRUCTION EASEMENT ACQ. LEGAL:

A tract of land in the East one-half (1/2) of Lot 2 on Mt. Olive, now Chautauqua Avenue, Girard Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

Commencing at the southeast corner of said Lot 2 on Mt. Olive, now Chautauqua Avenue, as platted in Girard Addition to Wichita, Sedgwick County, Kansas; thence west along the South line of said Lot 2 for a distance of 5.00 feet to the point of beginning; thence west along the said south line for a distance of 12.00 feet; thence north along a line parallel with the east line of said Lot 2 to a point 47.00 feet north of the south line of Section 10, Township 27 South, Range 1 East of the Sixth P.M. in Sedgwick Co., Kansas; thence east 12.00 feet along a line parallel with the said south section line; thence south to the point of beginning.

Property Owner Name:
GRIER OLIVER C K & KAREN

TAX KEY #: C 03385
TEMPORARY CONSTRUCTION EASEMENT
ACQUISITION SIZE: 185 sq. ft.

TRACT MAP

 PROPOSED TEMPORARY CONSTRUCTION
EASEMENT ACQUISITION

3008 East 13th



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and City Council

SUBJECT: 2012 “Be Air Aware” Media Campaign – Kansas Department of Transportation Grant
(All Districts)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Consent

Recommendation: Accept the Kansas Department of Transportation (KDOT) 2012 Grant, and authorize the necessary signatures.

Background: On June 18, 2008, the Wichita City Council approved a resolution “encouraging a community response for clean air” (attached). Since 2008, ozone levels in the greater Wichita region exceeded the federal ozone standard several times each year. In 2011, the ozone standard was exceeded on 19 occasions, the worst ozone year in decades. People’s health may be impacted when the standard is exceeded.

The greater Wichita region could be designated as a federal ozone “nonattainment” area if the standard continues to be exceeded. As a result, area business, industry and local government in the Wichita Metropolitan Statistical Area (Sedgwick, Butler, Harvey and Sumner Counties) would be required to develop and implement mandatory air quality programs. These programs might include purchases of new emissions control equipment, restrictions on certain activities on high-ozone days, or smog tests on vehicles, among other things. Implementation activities could have an estimated economic impact on the community of up to \$10 million per year, affecting current business activity as well as future economic development. Nonattainment status continues until ozone levels return to the standard or better and the standard is maintained for at least ten subsequent years.

Analysis: Taking action now can make a difference. The public can help to reduce ozone levels if it is aware of what it can do. Three fourths of the chemical emissions that combine to cause high ozone levels are generated by the general public and currently unregulated business. Most people are not aware of how their day-to-day activities can contribute to ozone formation. For example, anyone driving a combustion engine vehicle contributes to some degree. Consequently, small voluntary, low-cost actions by many people can make a difference.

In 2010 a similar “Be Air Aware Campaign” was approved by City Council. In 2011 the City applied for funding, through the Wichita Area Metropolitan Planning Organization (WAMPO) under the Congestion Mitigation and Air Quality Program, for a Community Education Program. This funding was approved in WAMPO’s 2012 Transportation Improvement Program (TIP) and is tentatively included in the TIP for 2013 and 2014.

The funds will be used to buy media services for air quality community education. The grant program and authorizing KDOT forms must be approved by the City Council. Once the authorized forms are

provided, KDOT will approve the City of Wichita to prepare bid appropriate documents for the project that KDOT must approve. A vendor will be selected following the City of Wichita's procurement process. KDOT will prepare authorizing documents to formalize the agreement with the City of Wichita and the service provider selected.

The City will utilize a media buyer to obtain cost effective media services to reach a diverse public with a significant number of appropriate messages being delivered through a variety of different media outlets and events. The media buyer will provide a strategic marketing campaign (Media Plan) and will work with City staff to implement the campaign from concept to completion. The work will include but is not limited to reserving and purchasing advertisements, assisting with message development and advertisement production if needed, providing evaluation and revamping the campaign for effectiveness, if necessary, and assistance with development of community partnerships.

Financial Considerations: The 2012 "Be Air Aware" Campaign for public education will not exceed \$33,500. The total federal contribution is \$26,800 and the City of Wichita required match is 20 percent, or \$6,700. The match will be provided by the Communications Team, as agreed. KDOT grants are available for subsequent project years 2013, 2014, and 2015, provided 1) funding is available from KDOT, 2) the appropriate forms are completed and approved by City Council, and 3) the City of Wichita provides a 20 percent match.

Goal Impact: This project addresses goals for Safe and Secure Community, Efficient Infrastructure and Economic development.

Legal Considerations: The Law Department has approved the forms provided.

Recommendation/Action: It is recommended that the City Council accept the grant, and authorize the necessary signatures.

Attachments:

- 1) Resolution 08-306, A Resolution Encouraging a Community Response for Clean Air; dated 6/17/2008
- 2) Project Application submitted to WAMPO May, 2011
- 3) KDOT Bureau of Local Projects, Request for Congestion Mitigation and Air Quality (CMAQ) Form 1312

Project Information

Project Name:

Other: Air Quality Community Education Program (2012)

Project Sponsor:

City of Wichita - Environmental Initiatives

WAMPO TIP number:

OTH-12-001

Competitive (C) or Non-Competitive (N) Project:

C

Project type:

- ☐ Road ☐ Bridge ☐ Interchange ☐ Intersection ☐ ITS ☐ Transit/Paratransit
☐ Enhancement ☐ SRTS ☐ Traffic Signal ☒ Other ☐ Safety

Project location (provide street name(s) if applicable):

NA

To:

From:

Project Scope:

Air Quality Community Education Program (2012)

What is the Federal functional classification of the project's location?

- ☐ Interstate ☐ Other Urban Freeway and Expressway ☐ Other Principal Arterial ☐ Minor Arterial
☐ Urban Collector ☐ Rural Major Collector ☐ Rural Minor Collector ☐ Local ☒ N/A

Provide any additional information if applicable:

Project for ozone reduction/energy efficiency education.

What FFY is the project expected to occur?

☒ Check here if the project will occur in more than one FFY?

If the project is in more than one FFY, identify the FFY's here:

2013, 2014, 2015

Additional Project Information

If the project has a state project number, identify here:

☒ Check here if the project in the MTP 2035 Project List?

MTP ID:

☒ Check here if the project in other plans or documents?

If the project is in other plans of documents, identify here.

List of Wichita Voluntary Ozone Reduction Actions

Project Funding Information**Funding Source 1**

What is the project's primary federal funding source?

MPO-CMAQ

\$26,800

Funding Source 2

If the project has a second federal funding source, list here:

\$0

Funding Source 3

If the project has a third federal funding source, list here:

\$0

Funding Source 4

If the project has a fourth federal funding source, list here:

\$0

Funding Source 5

If the project has a fifth federal funding source, list here:

\$0

Explain the sources of funding from the above section:

Total Funding

	<u>Federal</u>	<u>State</u>	<u>Local</u>	<u>Total</u>
<u>Other</u>	\$26,800	\$0	\$6,700	\$33,500
<u>PE</u>	\$0	\$0	\$0	\$0
<u>ROW</u>	\$0	\$0	\$0	\$0
<u>CE</u>	\$0	\$0	\$0	\$0
<u>Const</u>	\$0	\$0	\$0	\$0
<u>Total</u>	\$26,800	\$0	\$6,700	\$33,500

KANSAS DEPARTMENT OF TRANSPORTATION

BUREAU OF LOCAL PROJECTS

REQUEST FOR CONGESTION MITIGATION AND AIR QUALITY (CMAQ)

IMPROVEMENT PROGRAM PROJECT

County/City: _____

WHEREAS, The Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary," has been designated as an agent for _____ under an agreement dated _____, or, will be designated as an agent for _____ under an agreement to be executed at a later date and,

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project that will contribute to air quality improvements and reduce congestion, now, therefore,

WHEREAS, The county/city request the Secretary program the following Congestion Mitigation Air Quality Improvement project _____

ESTIMATED costs of such improvements are as follows:

Federal Funds	\$ _____
Local Funds	\$ _____
ESTIMATED Total for Project	\$ _____
Proposed Let Date	_____

Submit One (1) Copy of the document along with Approved TIP documentation

BE IT RESOLVED: That sufficient funds of _____ County/City are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the County/City are ineligible for federal funding and remain the responsibility of the County/City. Upon cancellation of the project by the County/City, the County/City shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day _____ Month _____ Year _____, at _____, Kansas.

Recommend for Approval:

APPROPRIATE LOCAL OFFICIAL(S)

County/City Engineer or Administrator

Chairperson/Mayor

ATTEST:

Member

County/City Clerk

Member

RESOLUTION NO. 08-306

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS, ENCOURAGING A COMMUNITY RESPONSE FOR CLEAN AIR

WHEREAS, clean air is critical to the quality of life of Wichita citizens and our surrounding neighbors, and

WHEREAS, the level of ozone in Wichita air samples has been steadily increasing; posing a threat to the area's economy and health, and

WHEREAS, non-compliance with newly-lowered EPA standards for ozone levels will result in as much as a \$10 million annual negative impact on our local economy, and

WHEREAS, the personal actions of citizens of Wichita and surrounding communities can have a direct effect on the lowering of our ozone levels, and

WHEREAS, businesses and industries in the Wichita area can also play an important role in maintaining our air quality;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
CITY OF WICHITA THAT**

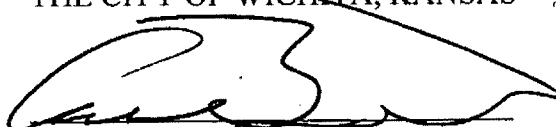
The City of Wichita staff shall take appropriate action for attainment of EPA ozone standards,

And, all local governments, businesses, industry and private citizens in the Wichita Metropolitan Service Area (MSA) are encouraged to join the City of Wichita in finding solutions to reduce air pollution and protect the well being of our community;

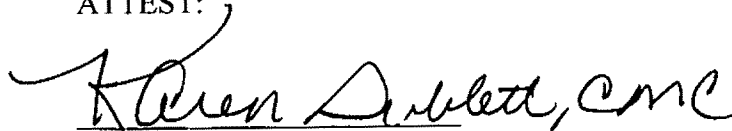
PASSED AND APPROVED THIS 17th DAY OF JUNE 2008.



THE CITY OF WICHITA, KANSAS


Carl Brewer, Mayor

ATTEST:


Karen Sublett, City Clerk

**City of Wichita
City Council Meeting
May 1, 2012**

TO: Mayor and City Council

SUBJECT: Sanitary Sewer Extension to Serve 3401 North Fairview (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project.

Background: The project will extend a sanitary sewer line to an existing property that has a failing septic system. The signature on the petition represents 100% the improvement district.

Analysis: The project will construct an 8" lateral sewer from the existing manhole south to 3401 North Fairview.

Financial Considerations: Estimated cost of the sanitary sewer extension is \$8,500, which will be assessed to the improvement district. The method of assessment is the square foot basis.

Goal Impact: This project addresses the Ensure Efficient infrastructure goal by providing sanitary sewer to a developed area.

Legal Considerations: The petition and resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the resolution, authorize the necessary signatures and authorize the signing of encroachment/utility agreements as required.

Attachments: Map, CIP sheet, petition, resolution and assessment roll.

CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA

USK

To Initiate Project

X

To Revise Project

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng & Arch	4/10/2012	Sanitary Sewer in Jones Park Addition	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
NI		2012		
9. Estimated Start Date As Required	10. Estimated Completion Date As Required	11. Project Revised		
12. Project Cost Estimate				
ITEM	CO	SA	OTHER*	TOTAL
Right of Way				
Paving, grading & const.				
Bridge				
Drainage				
Sanitary Sewer		\$8,500		\$8,500
Sidewalk				
Water				
Traffic Signals & Turn Lanes				
Totals		\$8,500		\$8,500
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the petition and adopt the resolution				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

12A.	Yes	No
Platting Required		
Lot Split		
Petition	X	
Ordered by WCC		
Remarks:		
100% Petition		
"Sanitary Sewer Utility		
Lateral 155, Main 4, Sanitary Sewer #23		
468-84820		

First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-095

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 155, MAIN 4, SANITARY SEWER NO. 23. (NORTH OF 29TH ST. NORTH, WEST OF BROADWAY) 468-84820** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF CONSTRUCTING AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 155, MAIN 4, SANITARY SEWER NO. 23. (NORTH OF 29TH ST. NORTH, WEST OF BROADWAY) 468-84820** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO- WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 155, Main 4, Sanitary Sewer No. 23 (north of 29th St. North, west of Broadway) 468-84820**.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of the lateral sanitary sewer improvements provided for hereof is estimated to be **Eight Thousand Five Hundred Dollars (\$8,500)**, exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

JONES PARK ADDITION TO NORTH WICHITA

Lots 21 through 24 Inclusive, Block 7

SECTION 4. That the method of apportioning all costs of said improvements attributable to the owners of land liable for assessment shall be on a **square foot** basis.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW



RECEIVED

SANITARY SEWER PETITION

APR 09 '12

To the Mayor and City Council
Wichita, Kansas

CITY CLERK OFFICE

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

L155, M04 SS#23

Jones Park Addition to North Wichita

Lots 21-24 Inclusive, Block 7

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

468-84820 (a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(N. of 29th St N,
W. of Broadway)
Dist. VI (b) That the estimated and probable cost of the foregoing improvements being **Eight Thousand Five Hundred Dollars (\$8,500)**, exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata rate of 1 percent per month from and after **May 1, 2012**.

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **Square Foot** basis:

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.
- (b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Jones Park Addition to North Wichita		
LOTS 21-22-23-24, BLOCK 7	GARCIA, FIDEL <i>Fidel Garcia</i>	

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

Shawn Mellis
Name

455 N Main
Address

268-9632
Telephone Number

Sworn to and subscribed before me this 9th day of April, 2012.



Jen Edwards
Deputy City Clerk

Estimated assessments for Sanitary Sewer to serve 3401 N Fairview						04/09/12	
Key No.	Property Owner	Property Address	Legal Description	Area (sq. ft.)	Estimated Assessment*	Annual Payment**	Resident Owners
JONES PARK ADD NORTH WICHITA							
A 12600	GARCIA FIDEL	3401 N FAIRVIEW AVE	LOTS 21-22-23-24, BLOCK 7	22450	\$8,500	\$625	1
			Totals:	22450	\$8,500		1
Abbreviations:							
etal. = and others							
etux. = and wife							
etvir. = and husband							
nr = non resident							
* Estimated assessment for the sewer lateral construction based on \$0.38 per square foot basis excluding inflation, and/or temporary financing.							
This cost does not include the Sewer Plant Equity Fee, approximately \$1350 for a residential property, or for installation of the private sewer line.							
** Estimated Annual escrow payment based on 4% bond sale rate, and spread over 20 years							
BREAKDOWN OF PROJECT COSTS							
Amount assessed to the improvement district				\$8,500			
Add: City Share for Main (0%)				\$0			
Total Estimated project cost				\$8,500			

City of Wichita
City Council Meeting
May 1, 2012

TO: Mayor and City Council

SUBJECT: SUB2008-00076 -- Plat of McPeak 2nd Addition located east of Tyler, south of 2nd Street. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)



Background: The site, consisting of two lots on 2.93 acres, is a replat of a portion of the McPeak Addition. The site is located within Wichita and is zoned SF-5 Single-family Residential.

Analysis: Sewer services are available to serve the site. The applicant has submitted a 100 percent Petition and a Certificate of Petition for extension of water services.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Certificate of Petition and Resolution have been approved as to form by the Law Department and will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolution.

Attachments: Certificate of Petition
Resolution

CERTIFICATE OF PETITION(S)

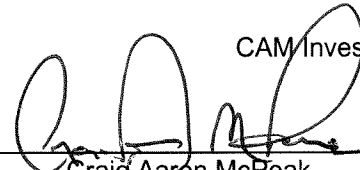
STATE OF KANSAS)
COUNTY OF SEDGWICK)

We, CAM Investment Properties LLC owner(s) of Lot 1, Block A, McPeak 2nd Addition, do hereby certify that petition (s) for the following improvement(s) have/has been submitted to the city Council of the City of Wichita, Kansas:

1. Water Distribution System

As a result of the above-mentioned petition(s) for improvement(s), all lots or portions thereof within Lot 1, Block A, McPeak 2nd Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvement(s)

Signed this 2 day of April, 2012


CAM Investment Properties LLC
Managing Member
Craig Aaron McPeak

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

BE IT REMEMBERED that on this 2nd day of April, 2012, before me, a Notary Public, in and for the County and State aforesaid, came Craig Aaron McPeak, Managing Member of CAM Investment Properties LLC, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged to me the execution of the same.

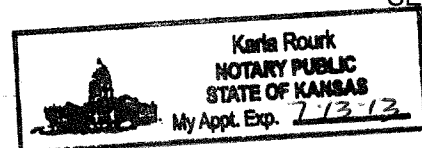
IN WITNESS WHEREOF, I have set my hand and affixed my seal the day and year last above written.


Notary Public

My Appointment Expires: 7-13-13

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



First Published in the Wichita Eagle on May 4, 2012

RESOLUTION NO. 12-096

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90553 (SOUTH OF CENTRAL, EAST OF TYLER)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING **WATER DISTRIBUTION SYSTEM NUMBER 448-90553 (SOUTH OF CENTRAL, EAST OF TYLER)** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Water Distribution System Number 448-90553 (south of Central, east of Tyler)**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Twenty-Nine Thousand Dollars (\$29,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **March 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MCPEAK 2ND ADDITION

Lot 1, Block A

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 1, Block A, MCPEAK ADDITION shall pay 100% of the total cost of the improvement.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 1st day of May, 2012.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF,
DIRECTOR OF LAW

City of Wichita
City Council Meeting
May 1, 2012

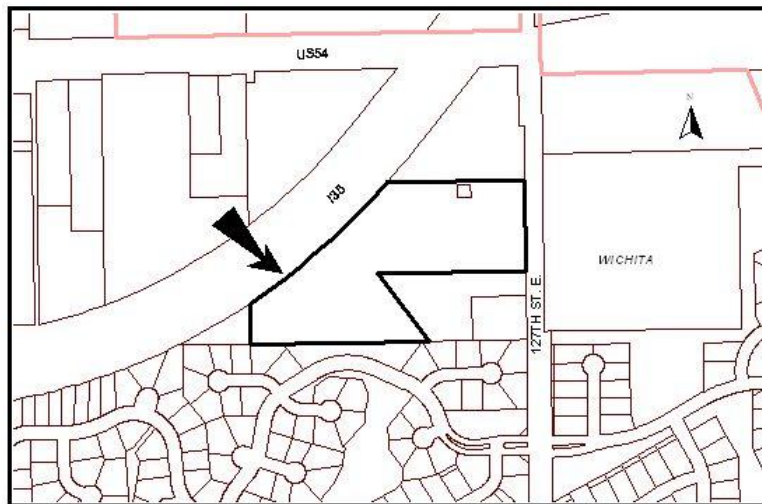
TO: Mayor and City Council

SUBJECT: No Protest Agreement for Future Sewer Extension for Lot Split LSP2012-00007 located south of Kellogg, on the west side of 127th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the Agreement.



Background: A No Protest Agreement for Future Sewer Extension (“Agreement”) was required by Public Works and Utilities Department for approval of a Lot Split (LSP2012-00007) for Lot 1, Block A, Second East 54 Addition.

Analysis: The lot split will allow for the creation of an additional lot zoned GC General Commercial. The Agreement assures the City of Wichita that the property will be included in the improvement district for sanitary sewer extension.

Financial Considerations: There are no financial considerations associated with the Agreement.

Goal Impact: Approval of the Agreement plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Agreement has been approved as to form by the Law Department and will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the Agreement.

Attachments: No Protest Agreement for Future Sewer Extension

NO PROTEST AGREEMENT FOR FUTURE SEWER EXTENSION

This Agreement made and entered into this 27th day of March 2012 by and between the City of Wichita, Kansas, party of the first part (hereinafter "City") and , Lola F. Boone Revocable Trust dated December 30, 2003, party of the second part (hereinafter "Owner")

WITNESSETH:

Whereas, City, as some undetermined time in the future, intends to construct certain public improvements to serve property owned by Owner and property owned by others; and

WHEREAS, the owner is the owner of real property legally described as:

Lot 1, Block A, Second East 54 Addition, Sedgwick County, Kansas, except that part described as: Beginning at the Southeast corner thereof; thence north along the east line of said lot, 306.4 feet; thence west parallel with the south line of said lot, 687.34 feet; thence southeasterly, 386.77 feet to a point on the south line of said lot, said point being 450 feet west of beginning; thence east 450 feet to beginning.

and

WHEREAS, the City wishes to insure that the said real property owned by Owner will be included in the improvement district responsible for that portion of the costs of said future improvement that are to be assessed pursuant to the provision of K.S.A. 12-6a01 et seq.

NOW THEREFORE, the parties hereto agree as follows:

1. City shall grant Owner's request for subject plat to said real property, without making necessary the submittal of petitions for sanitary sewer to serve said property.
2. Owner, on his/her own behalf and on behalf of his/her heirs, assigns and successors in interest, irrevocable waives his/her right, pursuant to K.S.A. 12-6a01, to protest the commencement of the construction a sanitary sewer extension undertaken by the City, but nothing contained herein shall be deemed to be a waiver by Owner of his/her right to challenge, pursuant to K.S.A. 12-6a11 the reasonableness of the portion of the cost of said construction assessed against Owner's said real property.

A copy of this Agreement shall be recorded with the Register of Deeds and the promises herein made by Owner(s) shall constitute covenants running with the land described herein.

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

Signed this 27th day of March, 2012.

Owner(s) please sign, then type or
print name below signature:

James R. Boone, sole Trustee
James R. Boone, sole Trustee

CITY OF WICHITA

By: _____
Mayor

ATTEST:

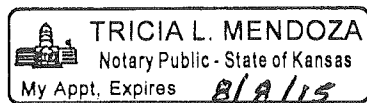
Karen Sublett, City Clerk

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this 27th day of March, 2012 before me, a Notary Public, in
and for the County and State aforesaid, came James R. Boone, sole Trustee, personally known to me to be the
same person(s) who executed the within instrument of writing and such person(s) duly acknowledged to me the
execution of the same.

IN WITNESS WHEREOF, I have set my hand and affixed my seal the day and year last above written.

SEAL



Tricia L. Mendoza
Notary Public

My Commission Expires: Aug. 18, 2015

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this _____ day of _____, 20 __, before me, a Notary Public, in and for the County and State aforesaid, came _____ as Mayor of The City of Wichita, a Municipal Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have set my hand and affixed my seal the day and year last above written.

SEAL

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law